

journal] on the computer," and that she "may have an electronic [copy of the manuscript] on [her] computer" (Exhibit 202).

LTG (Ret.) Patrick Hughes:¹⁸ In his sworn statement, LTG (Ret.) Hughes stated that (b) (6) gave him a single paper copy of the manuscript in June 2009, and that he turned the manuscript in to DIA in June or July of 2010 (Exhibits 186, 203, 214).

(b) (6) : In his IO interview, (b) (6) testified that (b) (6) sent him two e-mails with portions of two draft chapters for review "a couple of months after [their meeting]" in the fall of 2008 (Exhibit 191, pp. 55-56). (b) (6) also testified that (b) (6) may have sent him portions of the manuscript electronically, but he did not keep the e-mail or the portions of the manuscript he was asked to review (Exhibit 191, p. 23). Finally, (b) (6) testified that (b) (6) hand-delivered an un-redacted copy of book to him in the summer of 2010, which he currently has at his home (Exhibit 191, pp. 21-22).

(b) (6) : In his sworn statement, (b) (6) indicated that he received an e-mail from (b) (6) in 2009, which he no longer has, asking him to review the epilogue to (b) (6) book (Exhibit 204). (b) (6) subsequently read the epilogue and provided (b) (6) with basic grammatical feedback (Exhibit 204).

(b) (6) : In his IO interview (b) (6) testified that he received portions of the manuscript from (b) (6) but he did not read everything he received (Exhibit 174). After he informed the NSA of (b) (6) book, he was directed to delete the materials regarding the book from his computer, and to run software to ensure that the material was removed (Exhibit 354).

(b) (6) : In his IO interview, (b) (6) testified that he received a copy of (b) (6) manuscript by e-mail, which he subsequently deleted, in the "late November—window of '09" (Exhibit 79, pp. 71-72). (b) (6) printed out a hard copy of the manuscript and placed it in a binder, which he eventually gave to (b) (6) (Exhibit 79, p. 72).

(b) (6) : In his IO interview, (b) (6) testified that he received a copy of (b) (6) manuscript by e-mail, which he subsequently deleted, in the fall of 2009¹⁹ (Exhibit 86, p. 47). (b) (6) also testified received a copy of the "primer book" or "galley" (Exhibit 86, p. 70). (b) (6) testified that he placed the digital copy of the manuscript and the galley in his office safe after he learned that they contained

¹⁹ (b) (6) initially testified that he received the manuscript in August or September 2009; however, he later indicated that he recalled having the book for approximately two months before he reviewed it in December of 2009 (Exhibit 86, pp. 47-48). Therefore, (b) (6) may have received the manuscript as late as October 2009.

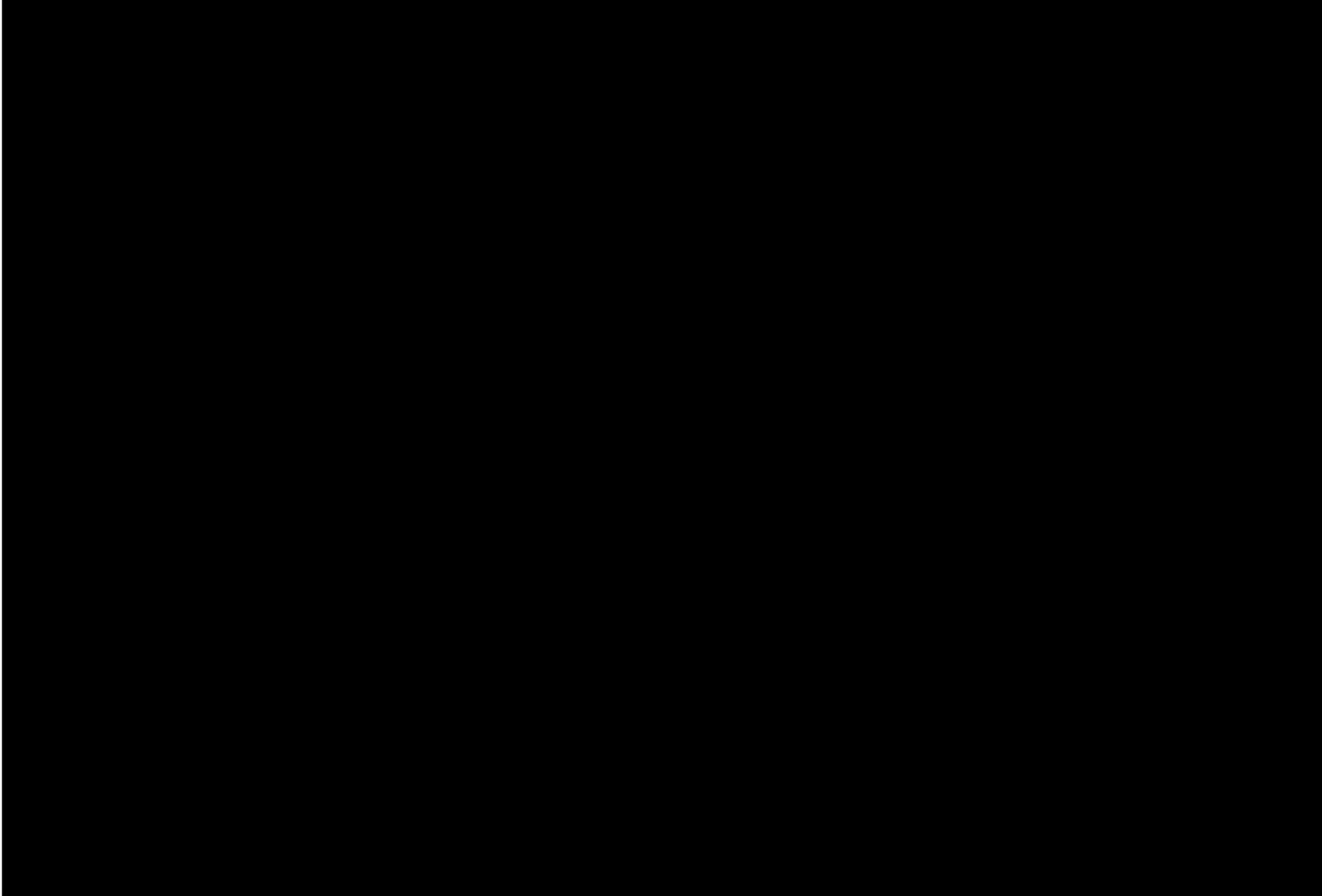
classified information²⁰ (Exhibit 86, pp. 69-70).

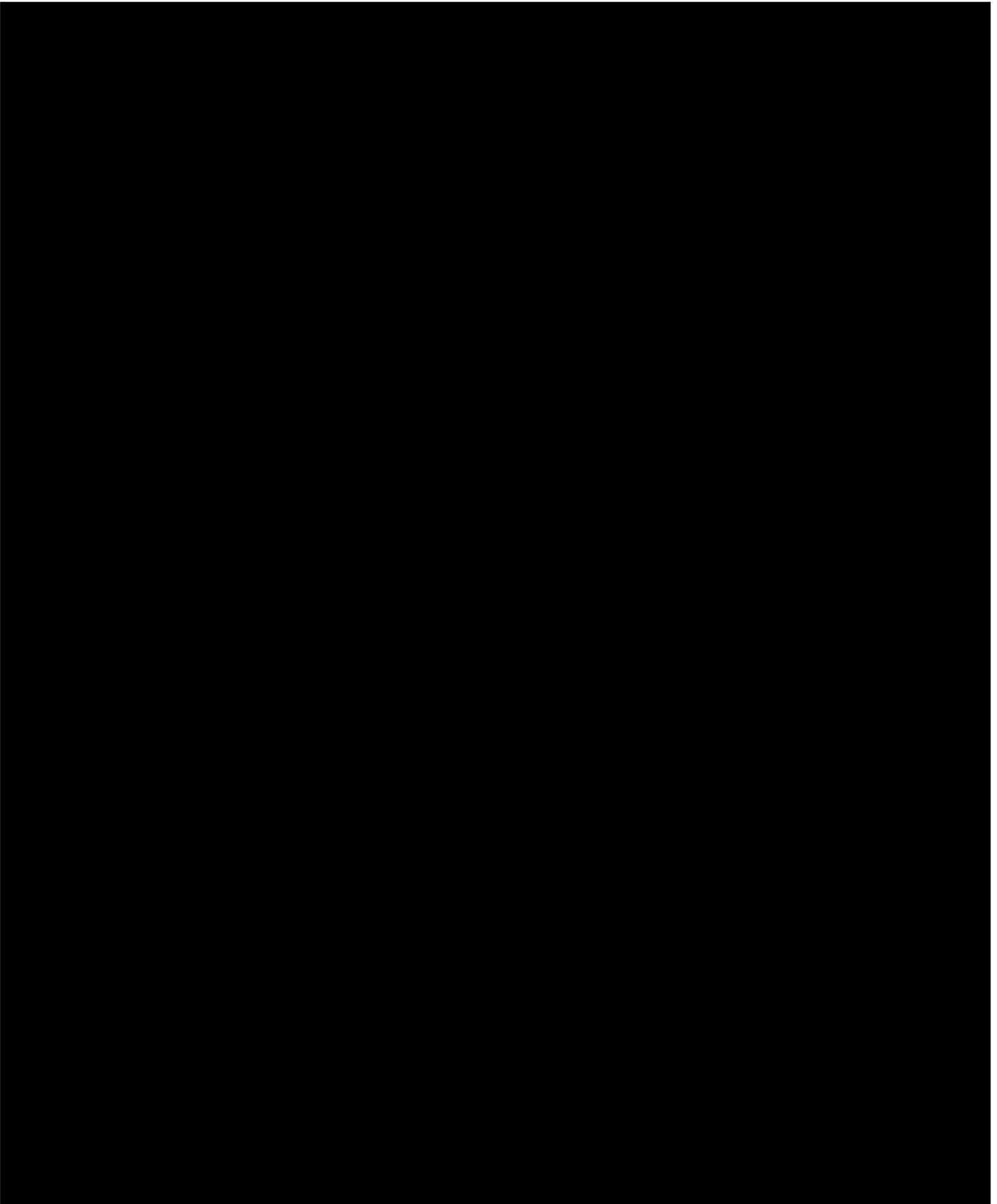
(b) (6) : In his sworn statement, (b) (6) indicated that (b) (6) asked him to read a portion of the manuscript, which (b) (6) referred to as "Chapter One" (Exhibit 119). (b) (6) did not indicate what he did with that portion of the manuscript (Exhibit 119).

(b) (6) : In his sworn statement, (b) (6) indicated that he received a draft epilogue from (b) (6) to review in September 2009 (Exhibit 206). (b) (6) subsequently read the epilogue and provided (b) (6) with basic grammatical feedback (Exhibit 206). (b) (6) provide a copy of the e-mail traffic to the IO and indicated that it was in his "sent" box (Exhibit 206).

(b) (6) : On 20 March 2010, the IO attempted to contact this person via the above-listed e-mail address. To date, this person has not responded.

(b) (6) : On or about 11 August 2010, (b) (6) publisher sent (b) (6) a hard copy of (b) book (Exhibit 92). The disposition of this this book is not presently known.





ISSUE 15I: WHAT ACTIONS DID (b) (6) TAKE TO OBTAIN A PRE-PUBLICATION REVIEW OF (b) (6) BOOK FROM DOD OR THE ARMY?

FINDING 15I: The only thing (b) (6) did to obtain a pre-publication review of (b) (6) book was to submit it to two members of (b) (6) Army Reserve unit (*i.e.*, (b) (6) and (b) (6))

ANALYSIS 15I: The only two people to whom (b) (6) submitted (b) (6) manuscript for review were (b) (6) and (b) (6) (Exhibit 71, pp. 92-93, 110-111). (b) (6) did not submit (b) (6) manuscript to any other DA/DoD organization because (b) (6) claimed (b) (6) was not required to do so (Exhibit 71, pp. 92-93, 98, 110). See Issue 9J for a more detailed discussion regarding what (b) (6) did to obtain a pre-publication review of (b) (6) book, as well as what (b) (6)

ISSUE 15J: WHAT WAS (b) (6) KNOWLEDGE REGARDING THE REQUIREMENT FOR SUCH A PRE-PUBLICATION REVIEW?

FINDING 15J: (b) (6) clearly knew that (b) (6) book required both a classification review and an OPSEC review prior to its release to the publisher; however, (b) (6) claimed that the U.S. Army was required to complete the required reviews because the U.S. Army was the last organization to grant (b) (6) a security clearance. (b) (6) also claimed that the review was properly done by members of the 94th DIV, (b) (6)

ANALYSIS 15J:

(b) (6) clearly knew that (b) (6) book required both a classification review and an OPSEC review. On 17 March 2009, (b) (6) sent BG (then COL) Corson,

(b) (6) (b) (6) and (b) (6) an e-mail to advise them that (b) had entered into a contract to write a book about (b) deployment experiences in (b) (6), and that AR 530-1 required an OPSEC review from (b) supervisor and the command OPSEC officer (Exhibit 121). (b) (6) then sent (b) (6) and (b) (6) a series of e-mails requesting either a “classification review” (Exhibits 141 and 169) or an “OPSEC/Security review” (Exhibit 146).

(b) (6) claimed that (b) only needed to submit (b) manuscript to (b) Army Reserve chain of command because the Army was the last organization to grant (b) a security clearance (Exhibit 71, pp. 92-93, 94, 96-97, 127, 218, 227, 294). (b) (6)

[REDACTED]

(b)

ISSUE 15K: WHERE DID (b) (6) OBTAIN SUCH KNOWLEDGE?

FINDING 15K

(b) (6)

(b) (5), (D) (5)

(b) (6)

[REDACTED]

ANALYSIS 15K: (b) (6) testified that his attorney (b) (6), (b) (5)

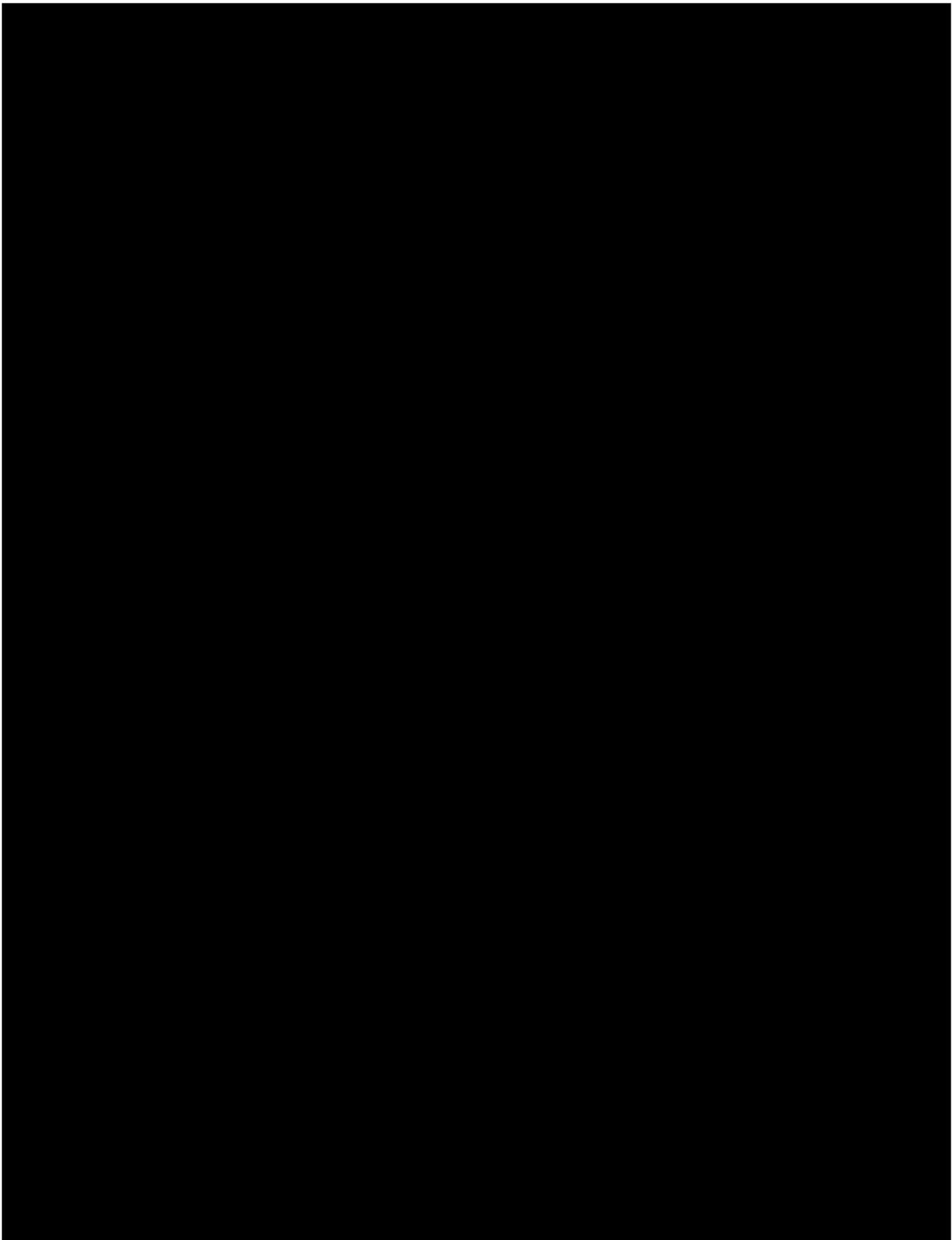
[REDACTED]

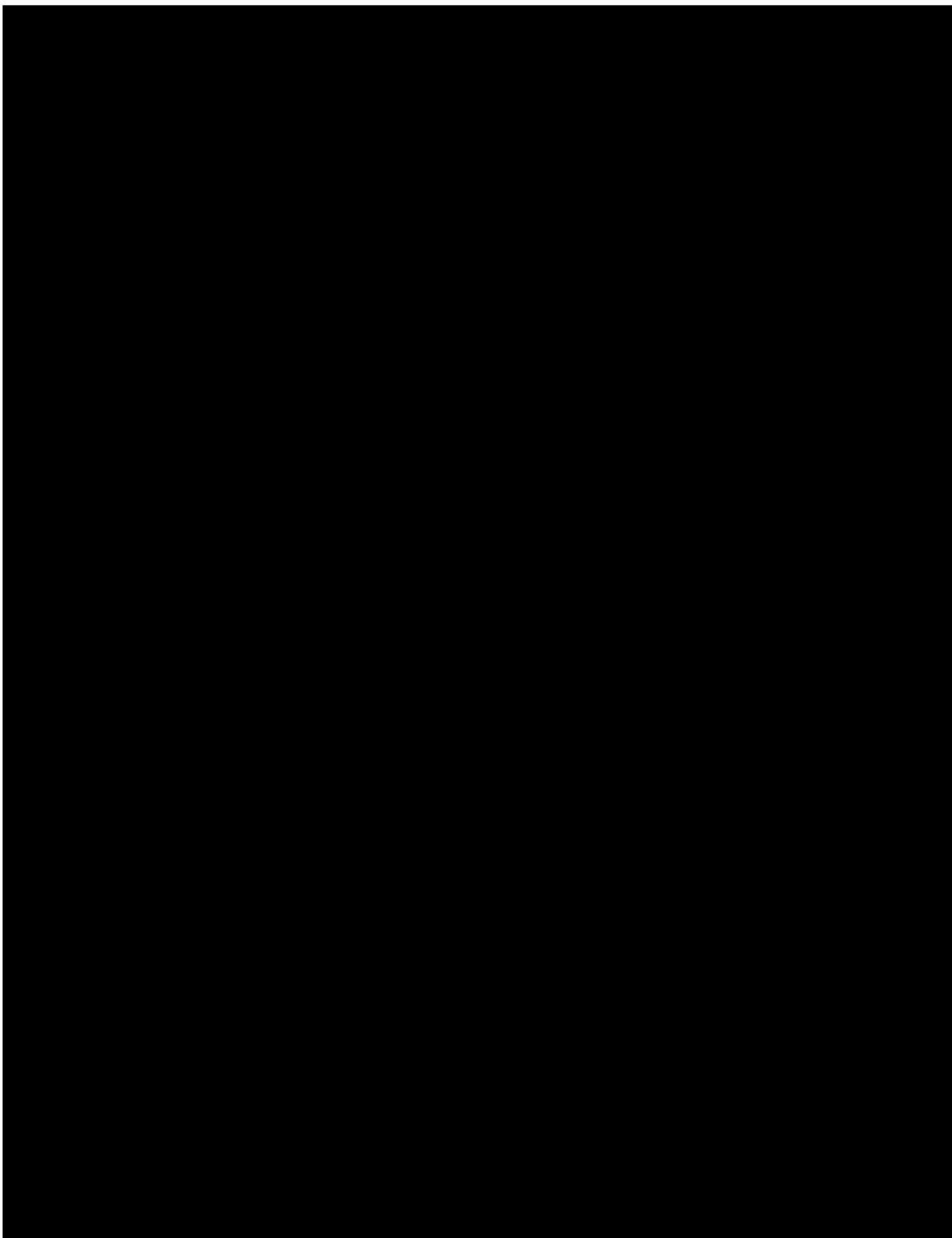
[REDACTED] (Exhibit 71, pp. 92-93). See Issue 9J for a more detailed discussion regarding what (b) (6) knew or should have known about the pre-publication requirements for (b) book based on (b) experience and training as a military intelligence professional.

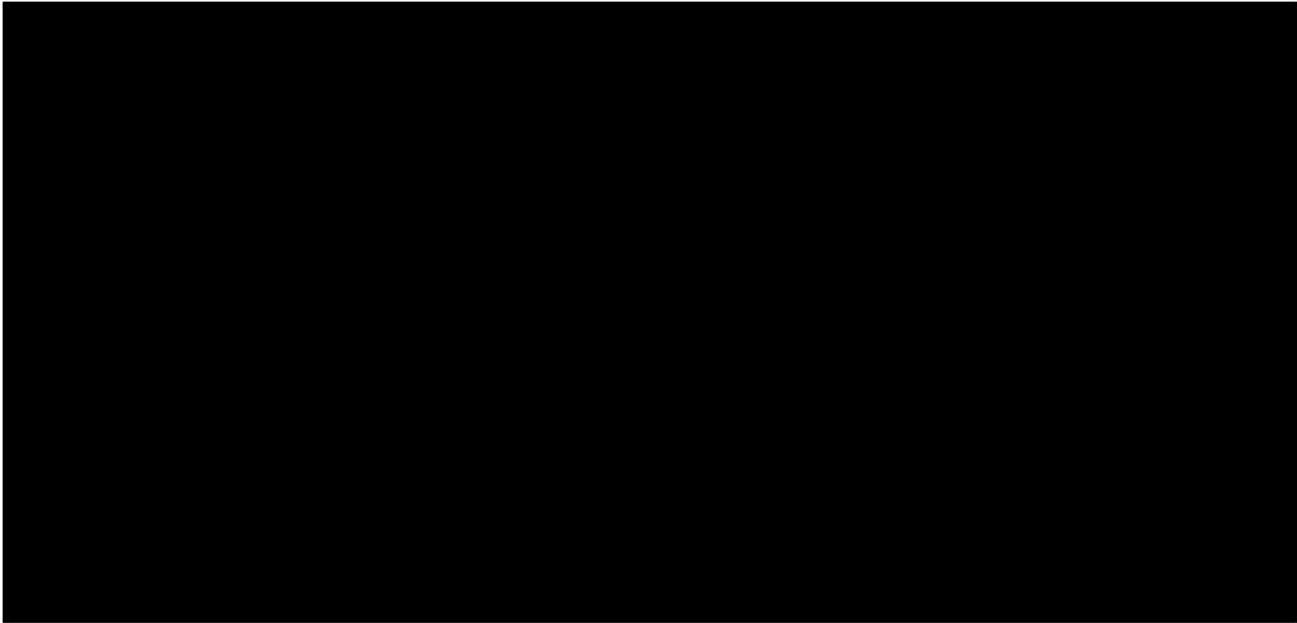
²⁴ See Issue 8, footnotes 67-70, and accompanying text.

(b) (6)

[REDACTED]







ISSUE 15N: WAS (b) (6) AWARE OF THE PROVISIONS IN THE NON-DISCLOSURE AGREEMENTS THAT ADDRESS THE REQUIREMENT TO OBTAIN A REVIEW OF ANY PROPOSED WRITING THAT INVOLVES DUTIES OR INFORMATION COVERED UNDER THE NON-DISCLOSURE AGREEMENT WHEN (b) WAS RESEARCHING, WRITING, EDITING, OR MAKING EFFORTS TO OBTAIN (e) COMMERCIAL PUBLICATION OF (b) BOOK?

FINDING 15N: (b) (6) admitted that (b) was familiar with the terms of NDAs, to include the requirement to obtain a review of any proposed writing that involves the duties or information covered by an NDA. (b) (6) also admitted that (b) had signed NDAs as a DIA employee. (b) (6)

(b) (6)

ANALYSIS 15N: (b) (6) admitted that (b) was familiar with the following NDA provision:

I hereby agree to submit for security review by the department or agency that has last authorized my access to sensitive information, all information or materials including work or fiction which contains—or purposes of

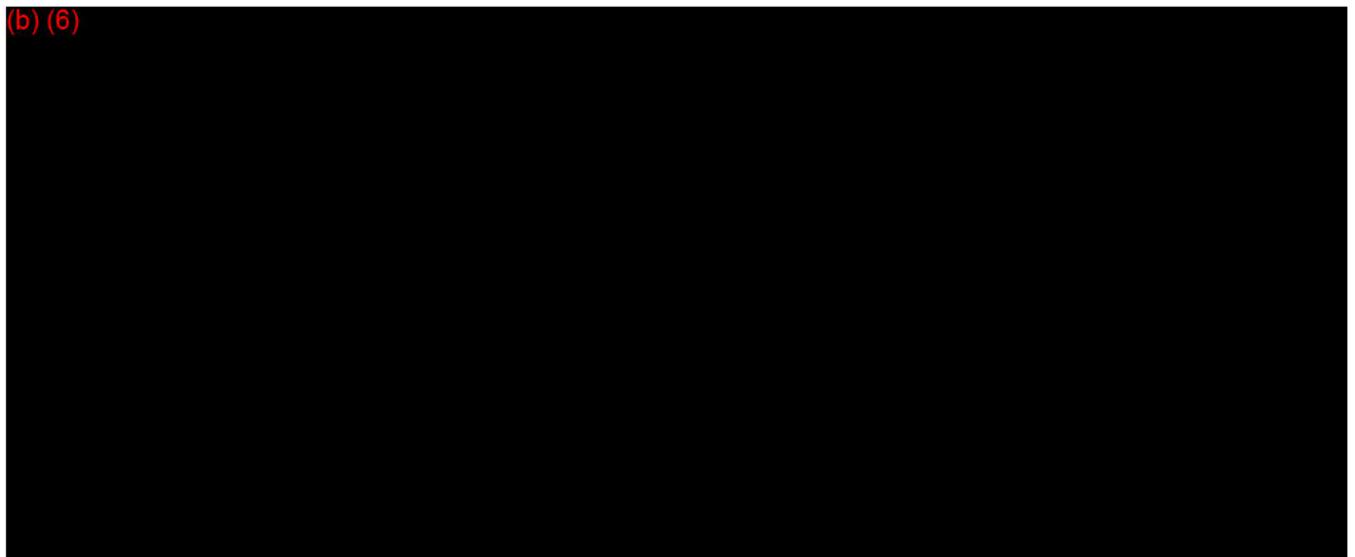
²⁹ The IO requested DIA to provide any and all nondisclosure documents (b) (6) signed as a DIA employee from 1995 through 2006, but this is the only document DIA has provided to date.

³⁰ This agreement is of limited relevance, since it was signed following the key events of this investigation, but the IO included it for the sake of completeness.

containing any sensitive compartmented information, descriptions, activities produced or related to sensitive compartmented information that I have reason to believe that are derived from sensitive compartmented information, that I contemplate disclosure to any person that's not authorized to have access to sensitive compartmented information, or that I have prepared for public disclosure.

(Exhibit 71, pp. 101-102). (b) (6) also admitted that (b) signed NDAs for DIA (Exhibit 71, pp. 89, 102, 108). Notwithstanding these admissions, however, (b) claimed that (b) was not obligated to seek a pre-publication review from DIA under his NDAs with that agency, because the Army was the last organization to grant (b) a clearance (Exhibit 71, pp. 92-93). See Issue 9J for a more detailed discussion regarding (b) (6) knowledge of the pre-publication requirements imposed by the NDAs (b) signed during (b) career.

(b) (6)



ISSUE 15P: WHAT STEPS DID (b) (6) TAKE TO ENSURE (b) BOOK DID NOT INCLUDE CLASSIFIED INFORMATION BOTH BEFORE AND AFTER (b) WAS INFORMED BY DOD OFFICIALS IN JULY/AUGUST 2010 THAT IT DID?

FINDING 15P: (b) (6)



A. (b) (6) Pre-Submission Safeguards:

(b) (6) claimed that (b) personally undertook measures to avoid including classified information in (b) book, including: (1) reading books from the same genre and limiting (b) book to the same general subject matter; (2) purposefully avoiding topics (b) knew to be classified; and (3) having (b) ghostwriter find the information they planned to include in the book in open source media.

(b) (6) sought information regarding the pre-publication review process from (b) civilian attorney, (b). (b) then sought a pre-publication review of (b) book from members of (b) reserve unit, who were neither qualified nor authorized to carry out such a review.³¹

(b) (6)

(b)

(b)

B. (b) Post-Submission Actions: When DoD officials learned of (b) book and the possible classified nature of its contents, (b) asked (b) publisher to delay the release of the book until the matter could be resolved; (b)

ANALYSIS 15P: The DoD-level review of (b) book in August 2010 found that the book contained a significant amount of classified information (Classified Annex). (b)

A. (b) Pre-Submission Safeguards:

(b) claimed that (b) and (b) ghostwriter relied on several methods to avoid including classified information in (b) book, including: (1) reading books from the same genre and limiting (b) book to the same general subject matter; (2) purposefully avoiding topics (b) knew to be classified; and (3) having (b) ghostwriter find the information they planned to include in the book in open source media.³² (b) testified that (b) read "a number of books," from the same genre as the book (b) planned to write with (b), such as "Jawbreaker" by Gary Bernstein, to determine the "tone" of the book (Exhibit 71, pp. 125, 146). In addition, (b) testified that (b) consciously avoided many topics describing "current methods or techniques being used"³³ (Exhibit 71, p. 125). Finally, (b) testified that (b) often

(b)

³³ (b) testimony on this point is consistent with (b) testimony. (b) testified that (b) was always very careful not to discuss classified information with her, stating that she "would push him to talk about things," and (b) would say, "I can't talk about that. That's classified." (Exhibit 130, p. 36). (b) also testified that (b) was deliberately vague about certain topics (e.g. (b)) which caused her to conduct additional, independent research on those topics (Exhibit 130, p. 63).

incorporated information into the book that she "came up with on her own to fill in the details" (Exhibit 71, pp. 125-126).

(b) (6) sought a pre-publication review of (b) book from members of (b) Army Reserve unit based on the advice of (b) attorney³⁴ (Exhibit 71, pp. 93-94; Exhibit 182), (b) (6)

(b) (6) knew that (b) book contained information regarding (b) because (b) based it on the "dispatches" (b) wrote while (b) was (b) in 2003 and 2004 (Exhibit 71, pp. 69, 102, 125, 146-147). (b) (6)

³⁴ (b) (6) testified as follows regarding the advice (b) received from (b) attorney:

(b) (5), (b) (6)

(Exhibit 71, p. 92-93).

³⁵ Neither (b) (6) nor (b) (6) is an intelligence professional. (b) (6) is a judge advocate (Exhibit 86, p. 17), and (b) (6) is a logistician (Exhibit 79, p. 12; Exhibit 140). (b) (6)

³⁶ (b) (6) testified that a proper pre-publication review could only be conducted by someone from the intelligence community:

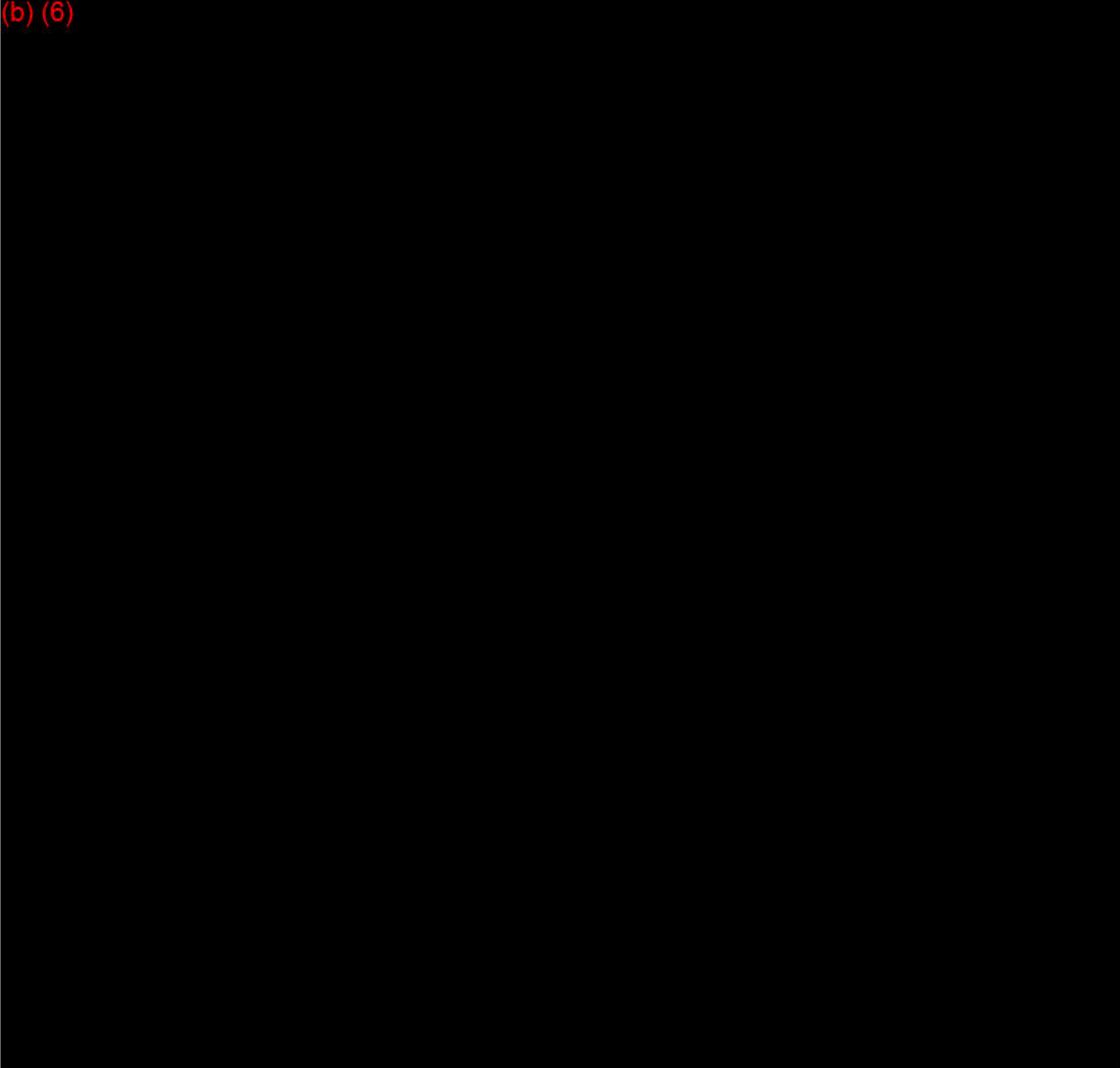
(b) (6)

or training to determine whether the information in (b) book was classified, despite their civilian employment. (b) (6)

[REDACTED] As a result, it is clear that

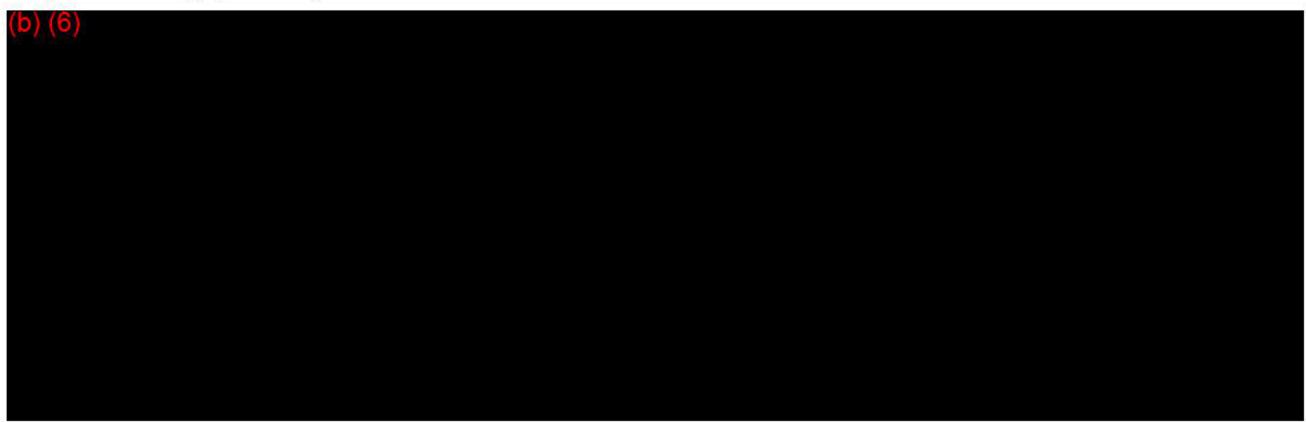
(b)

(b) (6)

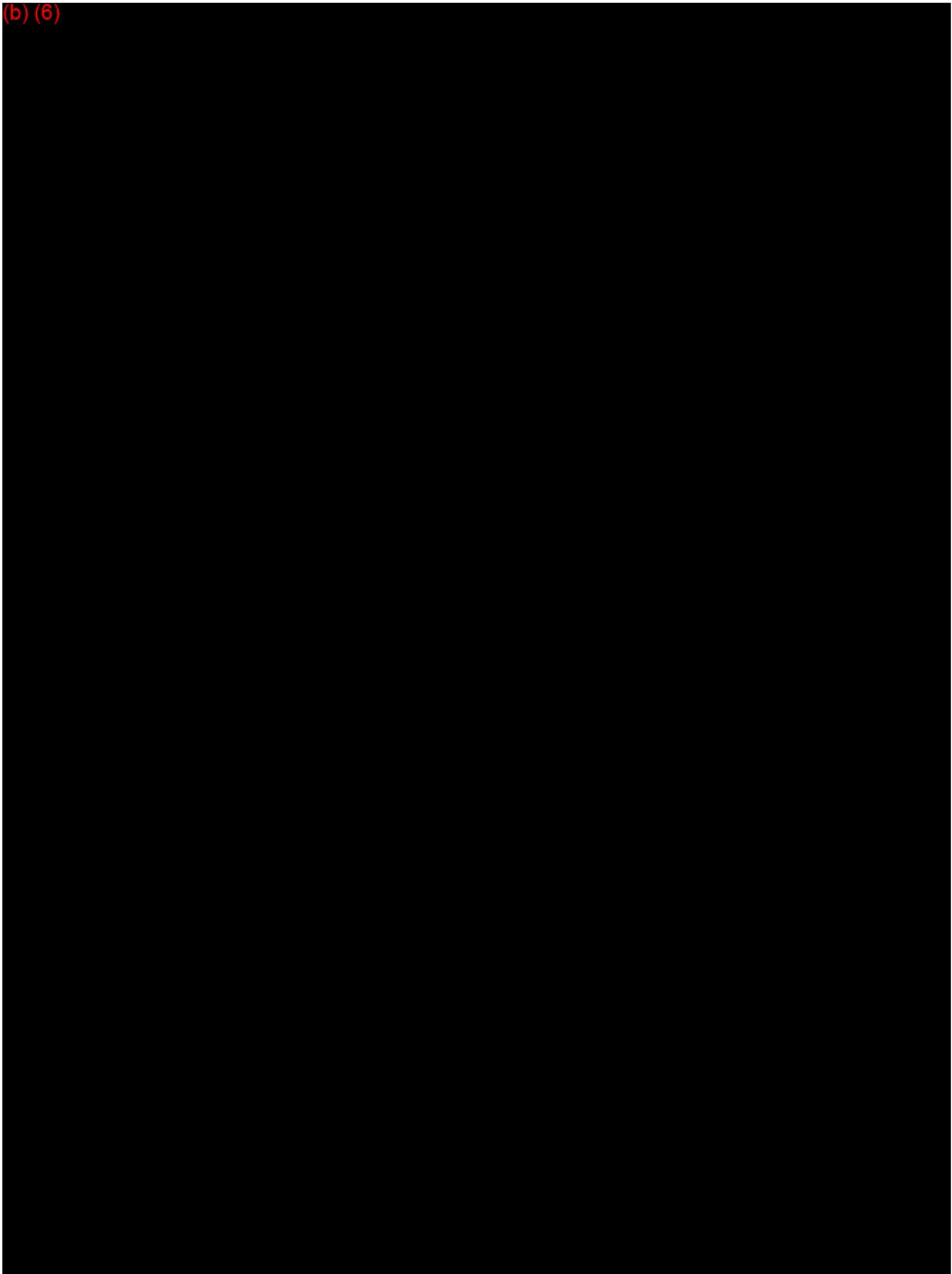


(Exhibit 174, pp. 33-35).

(b) (6)



(b) (6)



[REDACTED] (b) (6) [REDACTED]

Prior to 29 October 2009, (b) (6) submitted a substantial draft of the book, which apparently included not less than twenty-seven fully developed chapters, to (b) publisher (Exhibit 169). (b) (6)

[REDACTED] (Exhibit 151).

B. (b) (6) Post-Submission Actions: After (b) (6) submitted (b) book to the publisher in February 2010, (b) only efforts to safeguard classified information contained in (b) book consisted of three meetings with DoD/DIA in August 2010. Before those three meetings, (b) (6)

(b) (6)

(b) (6) first learned that DIA was interested in reviewing (b) book in May 2010 (Exhibit 71, p. 221; Exhibit 152; Exhibit 176; Exhibit 209). (b) (6)

(b) (6) For example, in an e-mail to (b) (6) on 19 June 2010, (b) (6) stated: (b) (6)

So – I would question as to why DIA would now, little more than a month from its national release, they's (sic) want to jump in – my opinion and (b) (6) (my attorney's opinion) is that they (DIA) are doing this as more relationation and an attempt to supres the book.

* * * * *

— (b) (6) [REDACTED]

(Exhibit 174, pp. 31-33, 50-51).

(b) (6) [REDACTED]

...the book HELPS the case for Army and SOCOM taking over mission that DIA is now in charge of...not sure if this helps you and Army in your response or not – but is something that I'd like to believe helps justify the Army taking a hard line against DIA on this...DIA will want to take out content – but not for security sake – it will be for their own purposes....

* * * * *

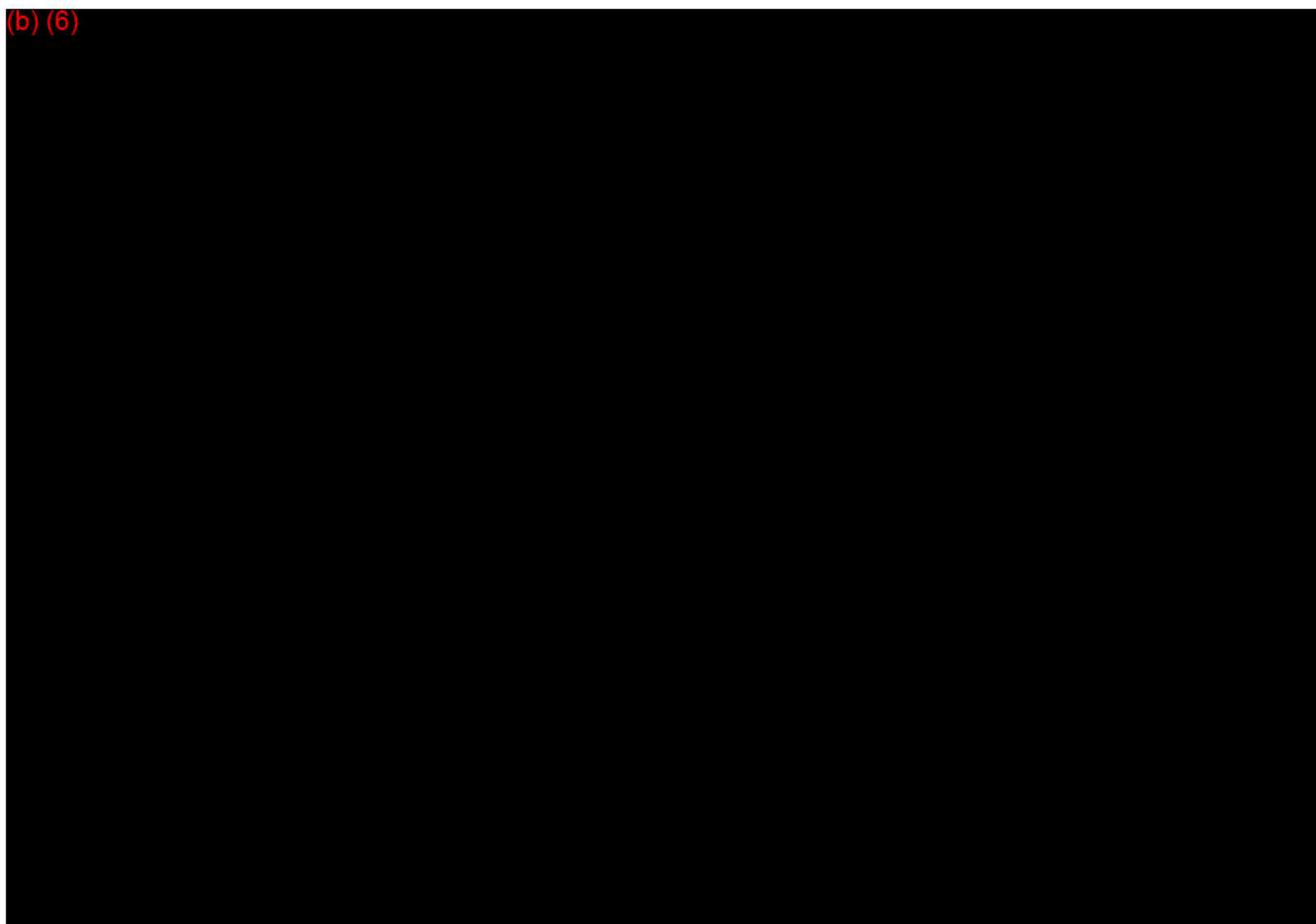
One last point: (b) (6) (feel free to contact him) thinks this is an opportunity for Army to wash its hands of the issue – and put the burden on DIA, and step away.

If the Army tells DIA it stands by its review and refuses DIA access to the book, DIA still has legal recourse – and (b) (6) recommends that Army refer DIA to the case law regarding “The Pentagon Papers” from 1971 – and seek a civil injunction against the publisher.

* * * * *

(Exhibit 88).

(b) (6)



ISSUE 15Q: DID (b) (6) PROVIDE ANY SOURCE DOCUMENTS OR OTHER INFORMATION TO (b) 'GHOST WRITER' FOR USE IN WRITING OR TO ANYONE ELSE FOR THE PURPOSE OF REVIEWING OR EDITING (b) BOOK? IF SO, BE SURE TO IDENTIFY SAID DOCUMENTS OR OTHER INFORMATION.

FINDING 15Q: (b) (6) provided (b) (6) with several "dispatches" that (b) originally wrote and e-mailed to (b) friends and family while (b) was deployed to (b) (6) in 2003 and 2004, along with a list of books to read. (b) (6) also provided (b) (6) to (b) (6) LTG (Ret.) Patrick Hughes, and several members of the 94 DIV, including, but not limited to BG Corson, (b) (6) (b) (6), and (b) (6). When (b) (6) and (b) (6) later raised security concerns over the contents of (b) draft book, (b) (b) also provided them with numerous "open sources" to support (b) claims that the book did not contain classified information.

ANALYSIS 15Q:

(b) (6) wrote what (b) called "dispatches" about (b) experiences in (b) (6) in 2003 and 2004, and (b) e-mailed them to (b) friends and family while (b) was deployed (Exhibit 71, p. 75). (b) (6) provided these "dispatches" to (b) (6), along with a list of the books (b) thought she should read to "become familiar with relating to the genre"⁴⁰ (Exhibit 71, pp. 69, 125, 146-147; Exhibit 130, pp. 24-25). (b) (6) also provided (b) (6) with a copy of (b) (b) (6) (Exhibit 71, p. 207; Exhibit 130, pp. 19-20).

On 17 March 2009, (b) (6) sent BG (then COL) Corson, (b) (6) (b) (6), and (b) (6) an e-mail message regarding (b) intent to write a book (Exhibit 121). (b) (6) attached a copy of (b) (b) (6) to the e-mail, stating that it (b) (6) " (Exhibit 121).

On 19 December 2009, (b) (6) sent (b) (6) and (b) (6) an e-mail raising (b) (5) (b) (6) identified in the draft book (Exhibit 142). In response, (b) (6) sent (b) (6) two e-mails, dated 21 December 2009 and 23 December 2009, to address (b) (6) concerns (Exhibits 144 and 145). Both e-mails referenced numerous Internet websites, news articles, and books that (b) (6) alleged were the "open sources" for the information contained in (b) book.

On 27 December 2009, (b) (6) forwarded the 21 December 2009 and 23 December 2009 e-mails to (b) (6) (Exhibits 147 and 148).

In June 2009, (b) (6) gave LTG (Ret.) Hughes a copy of (b) manuscript

⁴⁰ (b) (6) testified that (b) came up with the list of books (b) should read (b) (6) (Exhibit 130, p. 27).

(Exhibit 214). Approximately one month later, (b) (6) sent LTG (Ret.) Hughes a series of e-mails to explain the “sources” (b) (6) used to write (b) book. In one e-mail, (b) (6) told LTG (Ret.) Hughes that “the basic ‘source’ document/reference for the book’s policy content [was] the official Army history of the Afghan War 2001-2005, called A Different Kind of War,” and provided LTG (Ret.) Hughes with a copy of (b) (b) (6)

(Exhibit 255). In another e-mail, (b) (b) provided LTG (Ret.) Hughes with a list of the books (b) allegedly provided to (b) (6) “to verify that the info in (b) [redacted] book was not new, exclusive or secret” (Exhibit 179).

**ADDITIONAL ISSUE 3: DELAY IN PROVISION OF (b) (6) MANUSCRIPT
TO HQDA**

**IN THE COURSE OF THE INVESTIGATION ADDITIONAL EVIDENCE AROSE, AS
FOLLOWS:**

FINDINGS: On 8 June 2010, (b) (6) from the Department of the Army Office of General Counsel (DAOGC) called (b) (6) and requested a copy of (b) (6) and (b) (6) review memoranda. (b) (6) emailed (b) (6) the memos the same day. On or about 14 June 2010, (b) (6) from HQDA G-2 telephonically requested a copy of the book from (b) (6) for DIA review. (b) (6) inquired as to HQDA G-2's authority to review the book. On 15 June 2010, at (b) (6) request, (b) (6) emailed (b) (6) a detailed exposition of the legal authorities defining pre-publication review requirements (to include DoDD 5230.09 and DoDI 5230.29). The same day, (b) (6) forwarded (b) (6) email to BG Le Doux, noting (b) (6) disagreement (based on AR 360-1 (2000) para 6-6) with (b) (6) opinion that HQDA review of the book was required. At this time, (b) (6) had a substantial electronic copy of the book, and asked BG Le Doux if (b) (6) should send it.

BG Le Doux, however, had concerns that she wanted resolved before sending the book to HQDA. Specifically, BG Le Doux was concerned that DIA's request for (b) (6) book was motivated by continued retaliation against (b) (6) for (b) (6) (b) (6) testimony – rather than a genuine concern that the book might contain classified information. (b) (6) had made frequent representations to BG Le Doux that DIA was engaging in ongoing retaliation against (b) (6) – despite the fact that a thorough DoD IG investigation had found those claims baseless years before.) As a result, BG Le Doux directed (b) (6) to obtain (a) a copy of the referenced DoD IG investigation report; and (b) all of (b) (6) non-disclosure agreements (NDAs). (b) (6) shared these concerns, and concurred with BG Le Doux that her concerns were significant and needed to be resolved before providing the book to HQDA. In essence, however, (b) (6) left the decision as to whether and when to send the book entirely up to BG Le Doux.

(b) (6) went about attempting to obtain the documents BG Le Doux had requested. On 16 June 2010, (b) (6) emailed (b) (6) asking for copies of (b) (6) NDAs, and asked the 94th DIV IG to procure a copy of the DoD IG investigation. In (b) (6) email to the IG, (b) (6) expressly noted that (b) (6) was acting on BG Le Doux's behalf, and that the request was based on (b) (6) and the CG's concerns regarding potential DIA retaliation against (b) (6). (b) (6) also forwarded the 80th TC SJA (b) (6) a copy of (b) (6) email regarding pre-publication

review authorities, in which (b) (6) noted (b) disagreement with (b) (6) opinion, (b) concern regarding potential DIA retaliation, and 94th DIV's plan to seek assurances from HQDA that DIA's request was legitimate.

On 17 June 2010, (b) (6) emailed BG Le Doux, informing her that HQDA was attempting to locate (b) (6) NDAs, and recommending that she advise (b) (6) and (b) (6) of HQDA's request and (b) (6) opinion. BG Le Doux did so. Later that day, (b) (6) sent BG Le Doux two emails in response; one providing a copy of LTG (Ret.) Hughes's endorsement, with the claim that Hughes "would not have been shy in telling me if (b) saw anything that could damage National Defense" in the book; and the other claiming that the book was finished and in print, and essentially beyond (b) control at that point ("it is no longer 'my' book.")

On 18 June 2010, (b) (6) emailed (b) (6) a copy of an NDA signed by (b) (6) in 1986, and said that DIA was trying to locate (b) more recent ones. (b) (6) emailed (b) (6) the same day, informing (b) (6) of LTG (Ret.) Hughes's endorsement and the fact that the book "has been printed, and is being distributed." (b) (6) claimed he was passing along to HQDA the information (b) (6) had provided BG Le Doux the day before, and was doing so at BG Le Doux's request.

On 19 June 2010, (b) (6) sent an email to BG Le Doux, reiterating (b) (6) claim that DIA was retaliating against (b) (6), and further arguing that DIA had no authority to review (b) (6) book because the Army (not DIA) had originally granted (b) (6) security clearance. (b) (6) recommended to BG Le Doux that the Army verify DIA's claims as false by engaging with CCF (BG Le Doux appears to have directed such inquiries, given HQDA's subsequent emails to (b) (6) regarding the status of (b) (6) clearance re-adjudication at Army CCF). The same day, (b) (6) forwarded this email to (b) (6), adding a lengthy exposition of DIA's supposed abuses of (b) (6). In this email, (b) (6) expressly suggested to (b) (6) that it would be in the Army's best interests to stand by its original review of the book, and refuse to allow DIA access to it. (b) (6) again claimed that anything involving the production of the book was beyond (b) (6) control at that point. (Also on or about 19 June 2010, (b) (6) departed for training at the U.S. Army War College, located at Carlisle Barracks, Pennsylvania. He would remain there until approximately 1 July 2010, during which time he had access to email only during lunch breaks or in the evening.)

(b) (6)

(b) (6)

(b)

(b) (6)

On 30 June 2010, (b) (6) sent an email to (b) (6) and the 80th TC AGR and TPU SJAs (b) (6) and (b) (6). In the email, (b) (6) reiterated the request for a copy of (b) (6) book for DIA review, noting that due to the book's 31 August 2010 release date, "time is of the essence." (b) (6) noted that LTG (Ret.) Hughes's endorsement did not satisfy the review requirement, and that DIA was cooperating fully in the consideration of (b) (6).

(b) (6)

On 1 July 2010, (b) (6) emailed (b) (6), (b) (6), (b) (5), (b) (5), (b) (6)

On 2 July 2010, (b) (6) forwarded (b) (5), (b) (6)

It is not clear what was said, but (b) (6) did not call USARC as a result. BG Le Doux, however, contacted USARC and was told that (b) (5), (b) (6)

Later on 2 July 2010, (b) (6) emailed (b) (6), advising (b) (6), (b) (5)

¹ (b) (6) also noted that (b) (6), (b) (5)

In the end, it was determined that that the book would be sent to HQDA immediately after 94th DIV's next battle assembly (10-11 July 2010). BG Le Doux was apparently aware of this plan.

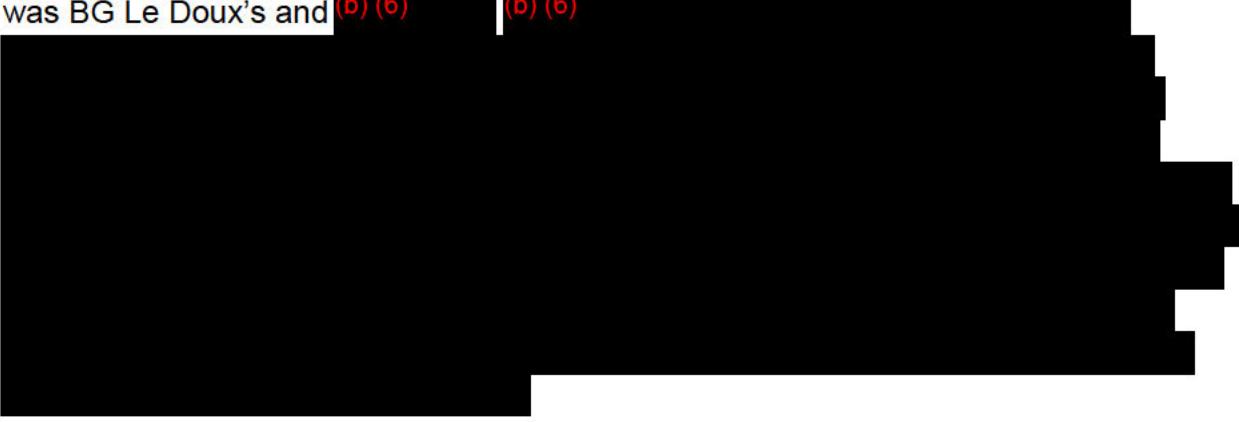
On Saturday, 3 July 2010, (b) (6) emailed (b) (6), (b) (6), (b) (5)

took this to mean that no further action was required until Tuesday, 6 July 2010, and emailed BG Le Doux to that effect.

¹ (b) (6) would later claim that (b) (6), (b) (5)

(b) (6) then coordinated with (b) (6) to obtain a copy of the final manuscript. On Wednesday, 7 July 2010, (b) (6) noted in an email to (b) (6) that (b) was not comfortable providing an electronic copy (as it would be too easy to reproduce and distribute unauthorized copies). In the end, (b) (6) brought a hard copy to the 10-11 July 2010 battle assembly. (b) (6) directed (b) Deputy SJA (b) (6) to send the book by Federal Express to DAOGC, which (b) did. DAOGC confirmed receipt on 15 July 2010. As of that date, thirty-one (31) days had elapsed since the initial HQDA DCS G-2 request for a copy of the book.

The primary reason (b) (6) manuscript was not timely forwarded to HQDA was BG Le Doux's and (b) (6) | (b) (6)



ANALYSIS:

What Were the Facts and Circumstances Surrounding HQDA's Request for (b) (6) Book and 94th DIV's Response?

On 8 June 2010, (b) (6) from the Department of the Army Office of General Counsel (DAOGC) contacted (b) (6) by phone.² The evidence indicates that (b) (6) requested 94th DIV's review memoranda at this time, but not a copy of the book. (b) (6) does not recall receiving a request for the book prior to 15 June 2010 (Exhibit 150, p. 34). (b) (6) recollection was that, prior to that date, HQDA's inquiries had been focused on getting copies of his and (b) (6) review memoranda. (Exhibit 150, pp. 34-35) At 1545 on 8 June 2010, (b) (6) emailed (b) (6) (cc'ing (b) (6) (b) (6)): the email

² It is not clear from the documentary evidence who initiated this telephone call; however, (b) (6) stated in his first interview that he was contacted by HQDA regarding the book, rather than the other way around (Exhibit 86, p. 71). Accordingly, the greater weight of evidence indicates that it was (b) (6) who contacted (b) (6).

acknowledged their earlier phone conversation; noted that (b) (6) and (b) (6) review memoranda were attached to the email as requested; and stated, "As we discussed, I will hold off on taking any additional action on this issue until I hear back from you." (Exhibits 280, 307)

No later than mid-June 2010, (b) (6) had received an express request for the book from HQDA. (b) (6) (a specialist in Information Security Policy at HQDA DCS G-2 (DAMI-CDS)) telephonically requested a copy of the book from (b) (6) on or about 14 June 2010.³ (Exhibit 281) When (b) (6) called, (b) (6) asked (b) (6) what HQDA's authority was to review the book. (Exhibit 162, 307) (b) (6) asked (b) (6) to provide that information to (b) (6), which (b) (6) did in a 15 June 2010 email. (Exhibits 160, 283, 307) That email furnished (b) (6) what (b) (6) described as "a summary of the authorities cited by DIA in support of the proposition that they, (b) (6), should have an opportunity to review (b) (6) manuscript." (Exhibits 160, 283, 307) The email included a lengthy exposition of legal authorities establishing the necessity for DIA (and/or other higher-level) review, including citations to and descriptions of DoDD 5230.09 and DoDI 5230.29, and a discussion of non-disclosure agreements (NDAs). (Exhibits 160, 283, 307)

About an hour after (b) (6) sent this email on 15 June 2010,⁴ (b) (6) forwarded it to BG Le Doux (cc'ing (b) (6)) stating:

(b) (5), (b) (6)

[REDACTED]

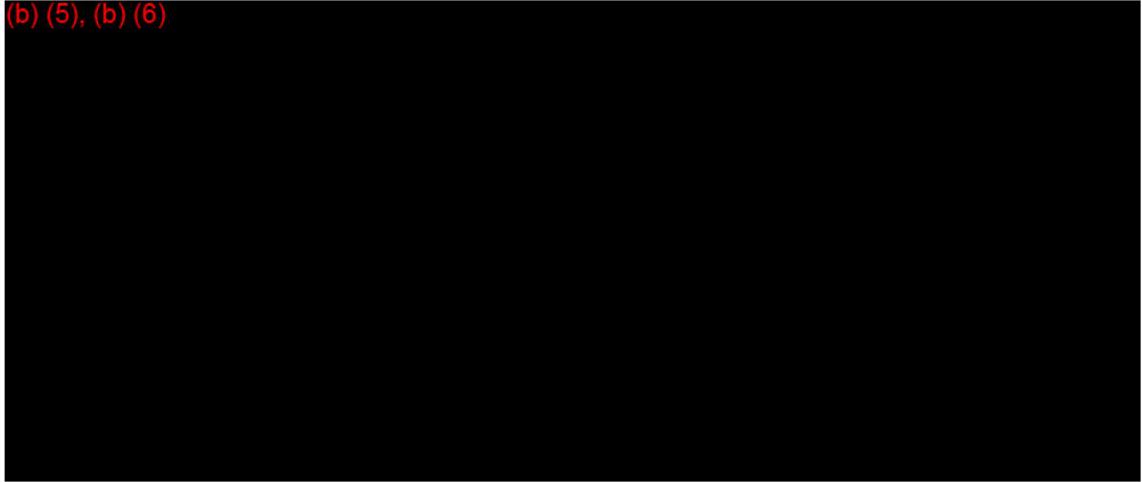
[REDACTED]

[REDACTED]

³ (b) (6) recalled having received a telephonic request for the book from either (b) (6) or (b) (6) (Army OTJAG). (Exhibit 86, p 71) (b) (6) recalled having placed this call about a week before 14 June 2010. (Exhibit 281) However, emails from this time indicate (b) (6) call actually occurred on or about 14 June 2010. Specifically, (b) (6) emailed (b) (6) on 16 June 2010 (cc'ing BG Le Doux and (b) (6)), stating, "On Monday, I received a call from G-2, HQDA. They want to review/approve the book for publication." (Exhibits 162, 307) The sixteenth of June, 2010 was a Wednesday; the preceding Monday was 14 June 2010. Also, on 15 June 2010, (b) (6) sent an email to (b) (6) which noted, "I understand that you spoke with (b) (6) – the Army's information security guru – this morning." (Exhibits 160, 283, 307)

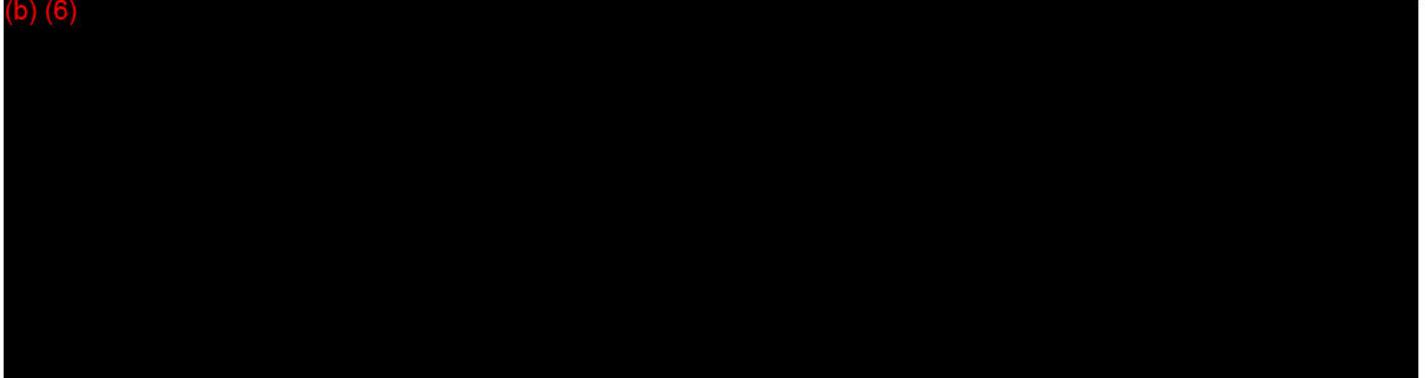
⁴ Note that, at this time, (b) (6) was aware, based on email (b) received from (b) (6) in May 2010, that (b) (6) book was "due to be printed (b) - and distributed on (b) (6) – and released for nationwide (and Canada) sale on (b) (6)." (Exhibit 127.)

(b) (5), (b) (6)

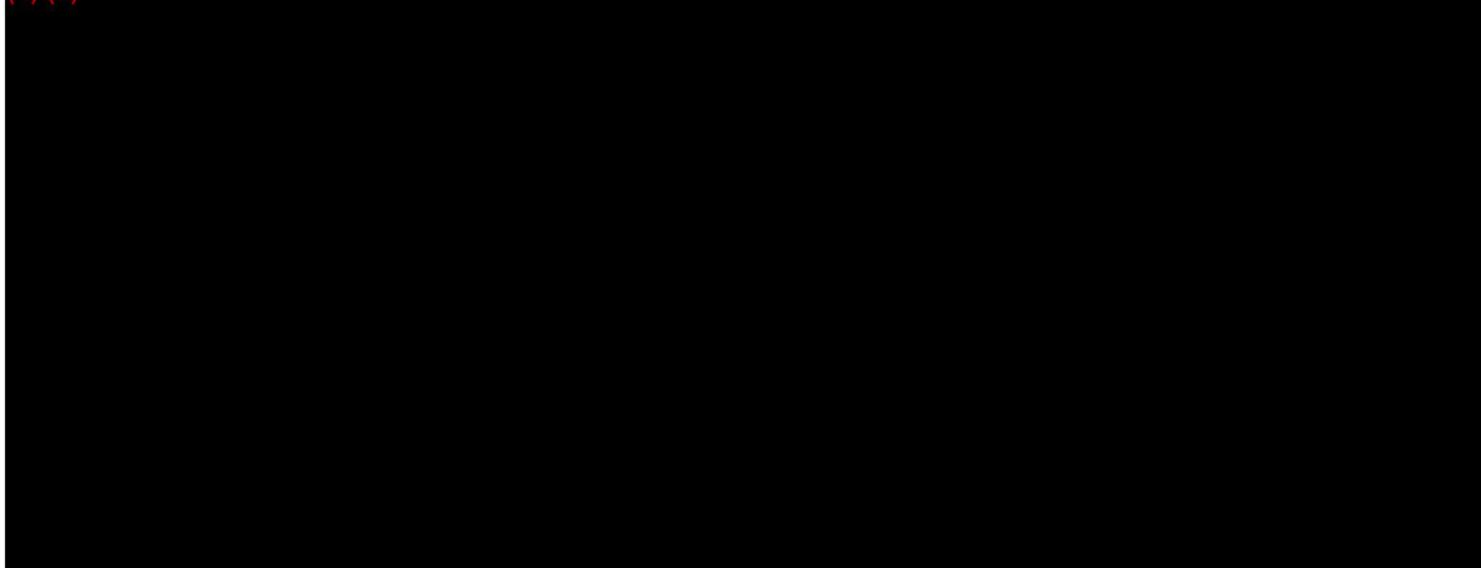


(Exhibit 283). It is notable that (b) (6) apparently had an electronic copy of the book available to send. (Exhibit 283) It is not clear exactly what version of the manuscript (b) (6) had or how up-to-date it was.⁵ Regardless, (b) (6) apparently had an

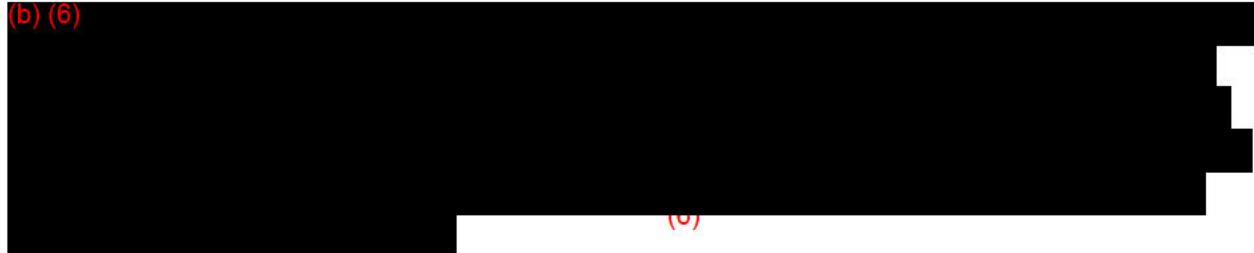
(b) (6)



(b) (6)



(b) (6)



(b)

BG Le Doux recalls she first learned of the HQDA / DIA request for the book "around 18 or 19 June," and that she learned of the request through (b) (6) (Exhibit 245, pp. 7, 20). Accordingly, she likely learned of the request through (b) (6) 15 June 2010 email.⁶ (b) (6) stated that he chose to involve BG Le Doux after the HQDA inquiry because the book had apparently "become a big deal" so he wanted to "make sure that everybody [was] kept in the loop." (Exhibit 150, pp. 17) Both BG Le Doux and (b) (6) acknowledged that they conferred with each other regarding the request. (Exhibit 245, pp. 7, 20-21; 150, pp. 12, 18, 19, 24, 26, 35-37; 39, 43, 45, 46, 67-68) According to (b) (6),

[W]hen I got Mr. (b) (6)'s first explanation . . . challenging the . . . ethical review that I did and (b) (6)'s security review, I forwarded that . . . to my general officer, General Le Doux, and she expressed concerns that I had as well, over the appropriateness, or – or, not the appropriateness . . . but what more do we need to do to look into to make sure that a Soldier within this command is not being railroaded, and what can we do to start looking at to make sure that the Army is protected for potential retaliation efforts by DIA. Me and General Le Doux had conversations concerning that, so it wasn't that I was pushing I – because I think I – I, like you said, I asked for a copy of the non-disclosure statements, and that was based off of a conversation that I had with General Le Doux that she wanted me to get those, so I – I asked for those. So, it wasn't that we were pushing back, but the general had concerns, and I was following up with –with those concerns.

affected its substance (specifically, (a) the addition of a conclusion that contained only policy recommendations, and (b) a change to the book's title). (Exhibit 127) (b) (6) attached two files to this email, which appear to be a copy of the new conclusion and a copy of the book's cover. (Exhibit 127)

⁶ It is noteworthy that concerns regarding (b) (6)'s book had previously been raised by the new (b) (6) (b) (6), (b) (6) in May 2010. (Exhibits 156, 175, 312, 313) As a result, BG Le Doux had received a number of emails on the subject, including at least one that noted the book was due to be released on (b) (6). (Exhibit 156) Accordingly, BG Le Doux most likely knew at the time of HQDA's initial inquiry that the book was scheduled to be released in the next (b) days.)

(Exhibit 150, pp. 11-12) BG Le Doux acknowledged that she did not direct immediate compliance with the HQDA request because of concerns she shared with (b) (6) and that she had (b) (6) carry out inquiries regarding those concerns on her behalf.

The request from OGC, I believe, went directly to (b) (6) and then from (b) (6) there were several questions that we had – that we discussed with OGC, and ultimately determined that we needed to give the book for review.

...

My initial concern was – (b) (6)

I had my IG contact DoD IG to find out if there was (b) (6) a substantiated claim, and it came back as unsubstantiated.

...

To the best of my recollection, the first that I knew about the [HQDA] request for the manuscript was around 18 or 19 June, at which point in time I had some questions. I was surprised that a request came direct from OGC to the 94th. I felt uncomfortable that it had not come through the chain of command, and wanting to make sure that we handled things properly, (b) (6)

(Exhibit 245, pp. 7, 8, 20-21.) (b) (6) stated that (b) (6), (b) (5)

(Exhibit 150, pp. 19, 24, 27) Rather, (b) (6), (b) (5)

(Exhibit 150, pp. 27) (b) (6), (b) (5)

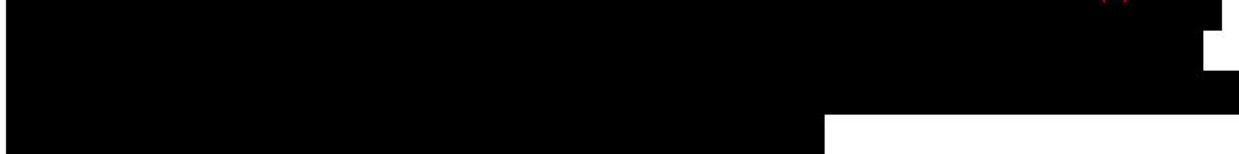
Exhibit 150, pp. 18, 19, 24, 26, 39, 41, 43, 45, 46). In fact, (b) (6) claimed

during his interview that he never really had a problem with sending the manuscript up: he only waited because BG Le Doux “didn’t give [him] the blessing to send the book forward.” (Exhibit 150, pp. 18) BG Le Doux confirmed that (b) (6) made no recommendation to her regarding whether to comply with the HQDA request. (Exhibit 245, pp. 22) (b) (6) did acknowledge, however, that he at least concurred with BG Le Doux during their conversations that her concerns were significant and needed to be resolved, presumably before the book could be sent.⁷ (Exhibit 150, pp. 46) In (b) (6) words, they were “gathering more information to make an informed decision” as to whether to send the book to HQDA. (Exhibit 150, pp. 42)

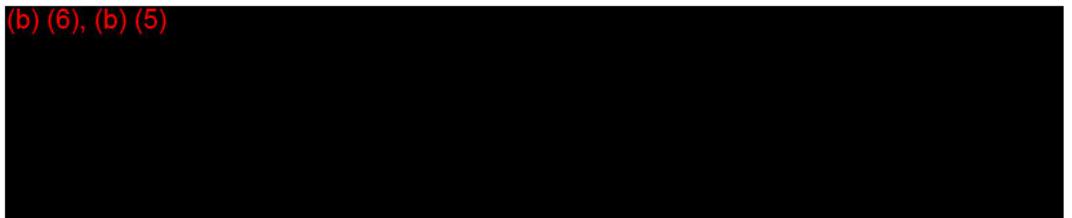
On 16 June 2010 at 1214 (b) (6) sent (b) (6) (cc'ing (b) (6)) a very brief email asking for copies of (b) (6) NDAs. (Exhibit 246) At 1328, (b) (6) sent an email to two AKO addresses – presumably IG POCs – stating, ‘(b) (6)



Also on 16 June 2010, (b) (6) sent to (b) (6) (cc'ing BG Le Doux and (b) (6)) an email status regarding HQDA’s inquiry. (Exhibits 162, 307) For the most part, the email is a repeat of (b) (6) 15 June 2010 email to BG Le Doux: (b) (5), (b) (6)



(b) (6), (b) (5)



⁷ When asked whether (b) had left the decision as to whether to send the book entirely up to BG Le Doux and provided her no advice whatsoever, (b) (6) responded, “No, no, I’m sure we had conversations about the need to – to see the non-disclosure statements. I’m sure we had conversation about the need to find out what’s going on with the IG Whistle Blower complaints and things like that. Yeah, we had conversations about that, sir.” (Exhibit 150, pp. 46)

(b) (6), (b) (5)

(Exhibits 162, 307) That evening, (b) (6) sent a brief reply to all, stating simply, "Thank you for keeping me informed on this issue. I will telephone tomorrow so we can discuss further."⁸ (Exhibit 308)

The following morning (17 June 2010) at 1104, (b) (6) emailed BG Le Doux (b) (5).
[REDACTED]
(b) (6)
(Exhibit 164) BG Le Doux seems to have accepted this advice, contacting (b) (6) about the matter personally: later that day, (b) (6) sent two emails to BG Le Doux which appear to have been in response to inquiries made by her. In one email, (b) (6) forwarded LTG (Ret.) Hughes's endorsement of the book to BG Le Doux, noting that Hughes was a former DIA director and "would not have been shy in telling me if he saw anything that could damage National Defense."⁹ (Exhibit 178) In the second email, (b) (6) claimed the book was "done and in print and being distributed to the publisher already," and that any changes to the book were beyond his control at that point ("it is no longer 'my' book.") (Exhibit 125)

On 18 June 2010, (b) (6) emailed (b) (6) a scanned copy of an NDA signed by (b) (6) in 1986, and reported that "DIA is still looking (they would have the latest NDA.)" (Exhibit 309) Apparently (b) (6) also sent an email to (b) (6) on 18 June 2010, in which (b) (6) stated, (b) (6), (b) (5)
[REDACTED]

(Exhibit 150, pp. 14, 20) (b) (6) claimed that BG Le Doux had forwarded him (b) (6) email regarding the Hughes endorsement, and that he (b) (6) in turn, had sent it to DAOGC at BG Le Doux's direction. (Exhibit 150, pp. 14-16) Regarding (b) (6) statement about the book having been printed and being sent to the publisher, (b) (6)

⁸ (b) (6)

Note that LTG (Ret.) Hughes had apparently asked (b) (6) for more details regarding the qualifications of the persons who reviewed (b) (6) book only the week before – but (b) (6) did not mention this. (Exhibit 257) LTG (Ret.) Hughes apparently did not raise serious concerns regarding the sufficiency of the review until 26 July 2010, however – well after the book had been submitted to HQDA. (Exhibit 181)

(b) (6) said that this was "just additional information for (b) (6) to know" that he was "sending out . . . as it [came] into me."¹⁰ (Exhibit 150, pp. 20)

The following day (19 June 2010) at 0902, (b) (6) sent a lengthy email to BG Le Doux (a) claiming that the Army was the appropriate authority to review (b) book because it (not DIA) last granted (b) access to TS/SCI; and (b) reiterating (b) claim of retaliation by DIA. (Exhibit 89) In this email, (b) directly alleged that DIA was lying about having issued (b) a clearance, and recommended "that the Army General Council [sic] engage Army CCF to verify the fact that DIA is not telling the truth." (Exhibit 89) (b) also stated in the email that, "per our discussion," (b) would provide to (b) "additional info regarding my announcement last year of my book and its release date." (Exhibit 89)

At 1535 that day, (b) (6) sent a very long email to (b) (6), which included (b) earlier email to BG Le Doux. (Exhibit 88) In the first part of the email, (b) detailed the pre-release publicity regarding (b) book, going on to speculate that DIA's sudden interest was further retaliation ("I would question as to why DIA would now, little more than a month from its national release, they'd [sic] want to jump in . . . they . . . are doing this as more retaliation and an attempt to suppress the book.") (Exhibit 88) (b) went on (a) to allege that "[a] 'little bird' on the policy side" told (b) that DIA wanted to suppress the book because it made DIA look bad and made SOCOM/Army look good; and (b) to re-hash at length (b) claim of retaliation, stating that DIA "created this situation" by firing (b) "based on three minor allegations" and needlessly "blew the cover of upwards of two dozen clandestine case officers" in the process. (Exhibit 88) (b) (6) at one point directly recommended that the Army resist the DIA request to produce the book:

¹⁰ The investigation file does not currently contain copies of these alleged emails (either BG Le Doux's email to (b) concerning LTG (Ret.) Hughes's endorsement, or (b) (6) 18 June 2010 email to (b) (6)). However, as noted above, (b) (6) acknowledged having sent (b) email (Exhibit 150, pp. 14), and (b) (6) noted in a subsequent email to (b) (6) that a former DIA director's endorsement did not (b) satisfy the DAOGC inquiry. (Exhibit 282) During (b) second interview, (b) (6) read from BG Le Doux's email concerning LTG (Ret.) Hughes's endorsement, and the IOs did not object or question its genuineness. (Exhibit 150, pp. 16-17) Accordingly, the existence and general content of these emails is sufficiently established for purposes of this investigation. Note also that (b) (6) word to (b) (6) that (b) (6), (b) (5)

(b) (6) (Exhibit 125) Accordingly, it appears that BG Le Doux forwarded both of (b) (6) 17 June 2010 emails to (b) (6), and that they were the source of the information (b) provided to (b) (6) on 18 June 2010.
)

So – why would the Army want to extend a courtesy now when DIA did NOT extend any courtesy to Army – when they came after me?

One last point: (b) (6) (feel free to contact him) thinks this is an opportunity for Army to wash its hands of the issue – and put the burden on DIA, and step away.

If the Army tells DIA it stands by its review and refuses DIA access to the book, DIA still has legal recourse – and (b) (6) recommends that Army refer DIA to the case law regarding “The Pentagon Papers” from 1971 – and seek a civil injunction against the publisher.

DIA will have a very high burden to meet – and even if they do, they will very likely lose in the end. As you will recall, the Pentagon lost the battle of the Pentagon Papers...and I suspect that DIA would be unwise to try it over my book – but they seem very bitter and bent on taking action – this allows them legal recourse and Army is free and clear and out from the middle of the issue.

(Exhibit 88 (emphasis added; ellipsis in original)) In the final sentence of the email, (b) (6) noted that, “At this point, the book has been published – it is out – I do not have copies yet – but it is now being provided to members of the press and the political in-crowd in DC for their review and comment...it is out of my control.” (Exhibit 88 (ellipsis in original))

Also on or about 19 June 2010, (b) (6) departed on temporary duty to the U.S. Army War College, located at Carlisle Barracks, Pennsylvania. (Exhibit 150, p. 31) (b) (6) remained there until approximately the first of July. (Exhibit 150, p. 31) During this time, (b) (6) was only able to access (b) (6) email during lunch breaks or in the evening. (Exhibit 150, p. 31)

BG Le Doux recalled receiving the DoD IG report concerning (b) (6) whistleblower claims around the 23d or 24th of June 2010. (Exhibit 245, p. 21) The report confirmed that the DoD IG had determined (b) (6) claim of retaliation by DIA to be unsubstantiated. (Exhibit 245, p. 21) An email from (b) (6) of DSS to BG Le Doux, dated 23 June 2010, confirms BG Le Doux’s recollection and DoD IG’s determination as to (b) (6) retaliation claim. (Exhibit 341) On 29 June 2010, (b) (6) emailed (b) (6) scanned copies of (b) (6) remaining

NDAs. (Exhibit 311) (b) (6) noted also that (b) (6)
[REDACTED] (Exhibit 311)

On 30 June 2010, (b) (6) sent an email to (b) (6), (b) (6) and (b) (6)
[REDACTED] (Exhibit 282) That email read as follows:

(b) (6), (b) (5)
[REDACTED]

(Exhibit 282) When asked at (b) (6) second interview why DAOGC had still not received the book as of the 30 June 2010, (b) (6) stated, (b) (6)
[REDACTED]

[REDACTED] (Exhibit 150, pp. 23-24)

On 1 July 2010, (b) (6) emailed (b) (6) (cc'ing (b) (6)), asking simply, (b) (5), (b) (6)
(Exhibit 284) (b) (6) replied the same day, essentially opining that the 94th DIV's review had been proper, but also concluding that (b) (6), (b) (5)
[REDACTED]

(b) (5), (b) (6)

[REDACTED] (Exhibit 285)

The following day (2 July 2010), [REDACTED] (b) (6) emailed BG Le Doux, informing her that
(b) (5), (b) (6)

[REDACTED] (Exhibit 286) (b) (6)

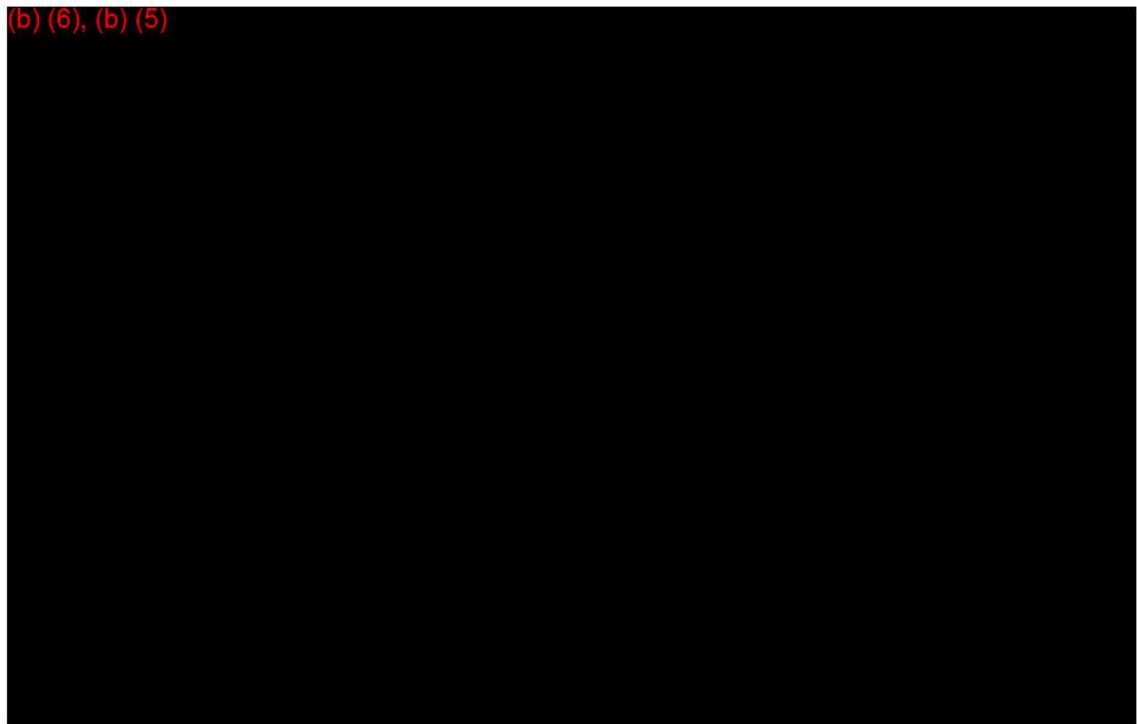
closed the email by asking, "(b) (5), (b) (6)"

"¹¹ (Exhibit 286) Later that day, BG Le Doux apparently replied to [REDACTED] (b) (6)
by email, in which she asked, (b) (5), (b) (6)"

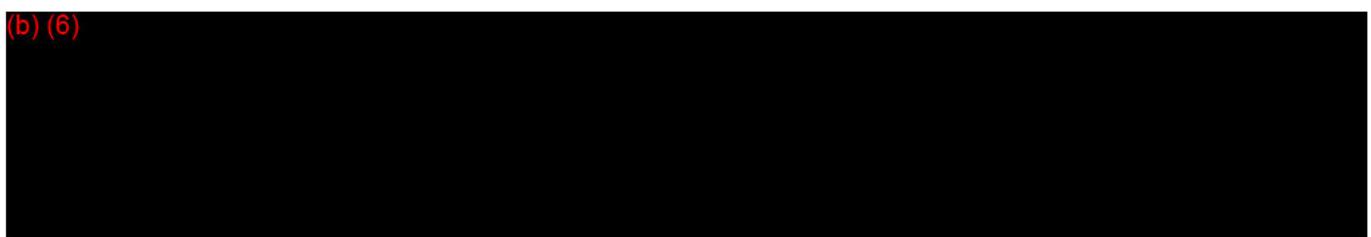
[REDACTED] Exhibit 150, pp.

67, 68)¹² (b) (6) recalled that (b) (6) did phone BG Le Doux as a result of this email, but remembered little of what was said. (Exhibit 150, p. 68, l. 13-19.) All (b) (6) recalled was that the conversation did not result in (b) (6) contacting USARC. (Exhibit 150, p. 68) Later that day (2 July 2010), (b) (6) sent an email to (b) (6) (cc'ing (b) (6) and (b) (6), and blind-cc'ing BG Le Doux), which read:

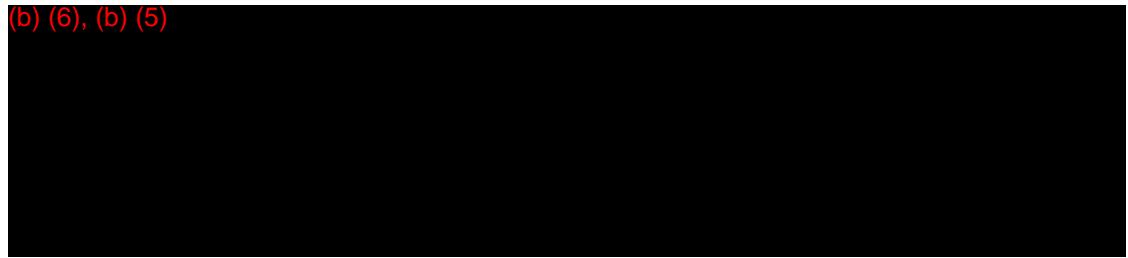
(b) (6), (b) (5)



(b) (6)



(b) (6), (b) (5)



(Exhibit 166) Presumably, (b) (6) had received approval from BG Le Doux to send the manuscript prior to sending this email.

BG Le Doux stated in her interview that, during this timeframe (around the 2010 Independence Day weekend), she directly requested and obtained USARC headquarters approval to release the manuscript to HQDA. (Exhibit 245, p. 21) However, she apparently determined that sending the manuscript to HQDA at the time of the 94th DIV's next battle assembly would be a sufficiently rapid response. (Exhibit 245, p. 21)

On or about the 2nd of July or so, either before or after 4th of July weekend, I don't recall, I called USARC and said, OGC is calling direct to the command regarding this and it has not come through the chain of command, is there any actions I need to take or – or is it okay to forward this now even though it hasn't gone through the chain of command? And at that point in time it was okay. I was informed it was okay to do that, and so at our next battle assembly, we sent – we sent the document which I believe was that same week.

(Exhibit 245, p. 21) The second of July, 2010 was a Friday. Presumably there would have been no unit battle drill over the Independence Day weekend (3-4 July 2010). Accordingly, the 94th DIV's plan apparently called for sending the book no earlier than the following weekend (10-11 July 2010).

On Saturday, 3 July 2010, (b) (6) emailed (b) (6) in response to the concerns expressed in (b) (6) 2 July 2010 email. (Exhibits 166, 287) (b) (6), (b) (5)



(Exhibit 287) (b) (6) also stated in the email that he would "call on Tues. to provide more background." (Exhibit 287) (b) (6) concluded from this statement that no further action on (b) (6) part was required until Tuesday (6 July 2010). (Exhibit 288)

(b) (6) forwarded (b) (6) email to BG Le Doux, informing her of (b) intention to take no further action until that time. (Exhibit 288)

Sometime after this, (b) (6) apparently coordinated with (b) (6) to obtain a copy of the manuscript.¹³ At 0646 on Wednesday, 7 July 2010, (b) (6) sent (b) (6) an email. (Exhibit 180) In this email, (b) (6) notes (a) that the “final edits” that were new to (b) (6) were attached; (b) that the only change was the addition of policy recommendations; (c) that the final version of the book (the “proof copy”) “has been provided to multiple media outlets and other key decision makers,” including “a copy now on its way to VP Biden;” and (d) that there had been no “major material” changes to the content of the book since the 94th DIV review. (b) (6) email went on to say (apparently in response to a request by (b) (6) for an electronic copy of the most current version of the book):

While I had full trust and confidence in the process that was followed by the Army (you and (b) (6)) to review the manuscript...I am uncertain as to how the manuscript would be used by others outside the chain of command.

I am a bit leery [*sic*] of providing a soft copy that could (and likely would) be proliferated endlessly since there is no protective restrictions on it.

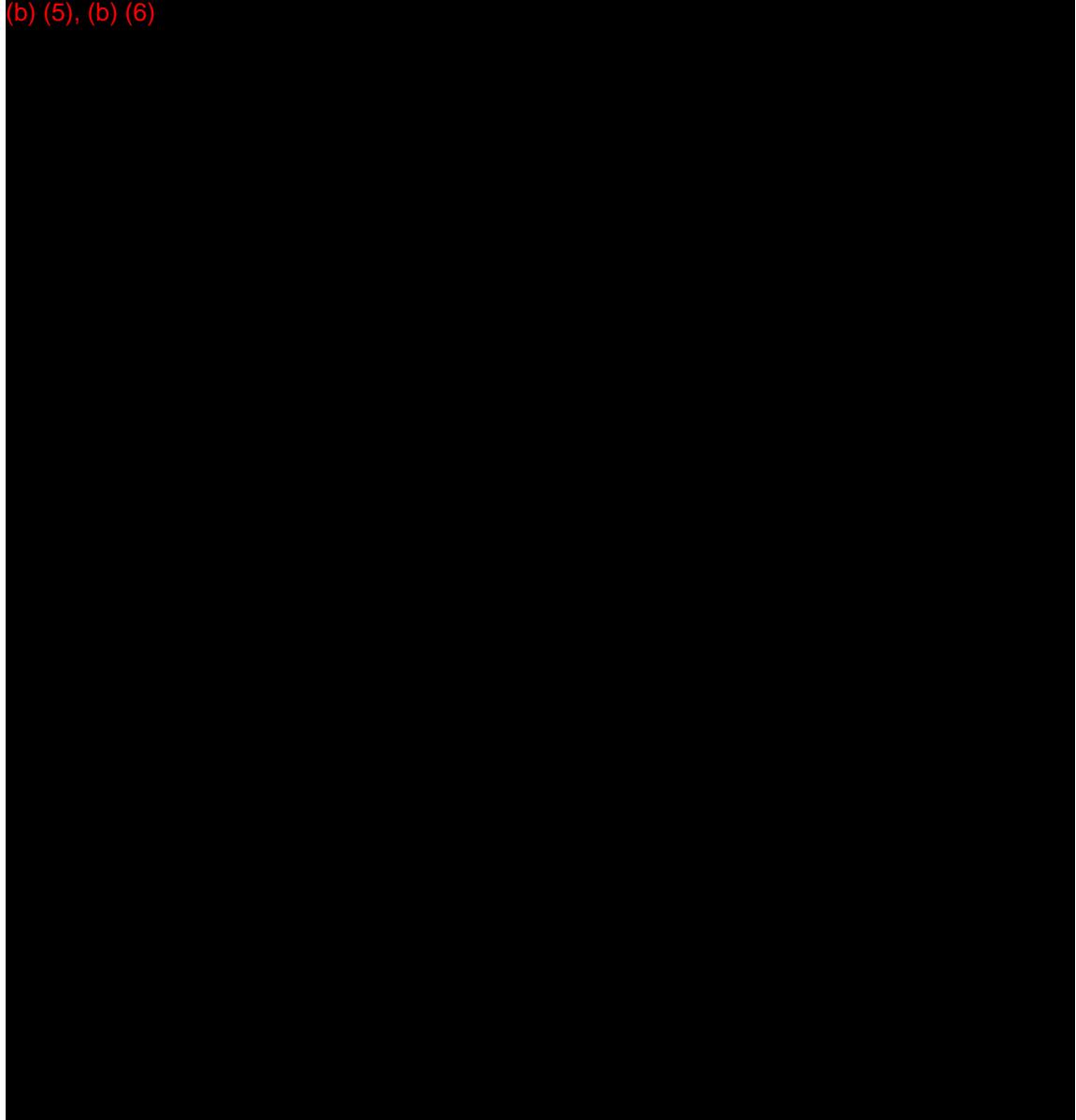
Therefore, as with you and (b) (6) I’d rather provide a “hard copy” – I’d feel much more comfortable putting either a print of the final draft that went to the publisher – or an actually [*sic*] copy of the book in the mail to you that you could then send forward to DA and then DA could send it to whom ever [*sic*] they need to.

At this point, the publisher and I do NOT want parts of the book “leaked” to the press in advance – and if the soft copy is forwarded out to multiple folks in DIA there is that possibility. And, unfortunately, [*sic*] my experience with DIA from 2005/2006 was that they did leak information about me and the issues then to the press when it suited them – we do not want a similar reoccurrence now.

¹³ When asked why it was necessary to get a copy of the manuscript from (b) (6) instead of just sending the electronic version they had, (b) (6) stated that (b) was under the impression based on conversations with (b) (6) that DAOGC wanted the latest version of the book. (Exhibit 150, p 44)

(Exhibit 180 (ellipsis in original)) (b) (6) sent an email in response later the same day (Wednesday, 7 July 2010):

(b) (5), (b) (6)



(Exhibit 180) Though there was apparently some brief initial confusion as to how the book would be delivered,¹⁴ it was ultimately decided that (b) (6) would bring a

¹⁴ At some point there was apparently confusion as to how the book would be delivered to DAOGC. (b) (6) recalled (b) (6) agreeing to hand-deliver a copy of the book to the Pentagon. (Exhibit 86, (b) (6); 150, pp. 32, 33, 34) In fact, at one point (b) (6) asserted that (b) (6) had agreed to deliver the book,

hard copy to the upcoming battle drill for the unit to send to DAOGC. (Exhibit 290) On Thursday, 8 July 2010, (b) (6) emailed (b) (6), stating that (b) (6), (b) (5) [REDACTED] and that (b) (6) would (b) (6), (b) (5) [REDACTED]¹⁵ (Exhibit 290)

(b) (6) subsequently brought a hard copy of the book to the battle assembly which occurred on 10-11 July 2010,¹⁶ after which (b) (6) directed (b) (6) to FedEx the book to DAOGC. (Exhibit 71, p. 308;¹⁷ 86, p. 71; 150, p. 59; 245, p. 21; 123; 91) (b) (6) did as (b) was directed. (Exhibit 123) With the book was a cover memorandum signed by (b) (6) (dated 11 July 2001, Subject: '(b) (6)' [REDACTED]) which stated in part, "for clarification purposes, I had the opportunity to discuss the non-disclosure agreement issue with (b) (6) [sic] this weekend, and (b) (6) informed me that DIA never issued (b) (6) a security clearance." (Exhibit 91)

On 15 July 2010 at 1034, (b) (6) sent (b) (6) an email confirming that DAOGC had received the manuscript, and that it was "under review" as of that time. (Exhibit 291.) Thirty-one (31) days had elapsed since (b) (6) initial 14 June 2010 request that 94th DIV provide HQDA DCS G-2 a copy of (b) (6) manuscript. (Exhibits 160, 162, 283, 307)

Why Did HQDA Not Receive (b) (6) Manuscript Until 31 Days After the Initial Request was Made?

(b) (6)
[REDACTED]

[REDACTED] (b) (6)
[REDACTED]

but the command ended up having to mail it after (b) (6) (b) (6) (Exhibit 86, pp. 71; Exhibit 150, pp. 34) However, (b) (6) recollection is that (b) offered to deliver the book to HQDA, but (b) (6) declined, saying, "No, no, I'll just take it and send it on." (Exhibit 71, p. 309)
¹⁸ (b) (6) apparently also attempted to reach (b) (6) by phone on 8 July 2010 to deliver this news, but ended up leaving a voicemail instead. (Exhibit 289) At 2028 that day, (b) (6) sent a reply to (b) (6) earlier email, in which (b) noted having received a voicemail from (b) (6) (Exhibit 289). The voicemail apparently concerned (b) (6) pending delivery of a copy of the book, which (b) (6) described as "great news." (Exhibit 289)

¹⁶ (b) (6) email notifying (b) (6) of his intent to send the book immediately following "this weekend's battle assembly" was sent on 8 July 2010, a Thursday. (Exhibit 290) The weekend immediately following would have been 10-11 July 2010.

¹⁷ (b) (6) was unclear as to the exact dates involved, but was certain that (b) hand-delivered a hard copy of the book to (b) unit at the first battle assembly after (b) got their request. (Exhibit 71, pp. 307-309)

(b) (6)

(b) (6)

(b) (6)

On 14 June 2010, a week after having sent the 94th DIV review memoranda to HQDA at their request, (b) (6) received notice that HQDA DCS G-2 was requesting (b) (6) book. (Exhibits 160, 283, 307) No later than 15 June 2010, (b) (6) knew that the request originated with DIA, a DoD-level intelligence organization. (Exhibit 160, 283, 307) (b) (6) with considerable military experience. (Exhibit 86, pp. 2) In 2010, (b) (6)

(Exhibit 86, pp. 6, 7) (b) (6)

(b) (6)

(b) (6)

On 15 June 2010, (b) (6) provided (b) (6) a detailed description of the legal authorities controlling pre-publication review, including DoDD 5230.09 and DoDI 5230.29 (authorities which (b) (6) later acknowledged would have required pre-publication review of (b) (6) book at levels above 94th DIV). (Exhibits 160, 283, 307; 86, pp. 146, 147, 148; 150, pp. 90, 99, 100) (b) (6)

(b) (6)

(5), (b) (6)

(b) (6)

(b)
(6)

((b) (6))

(b)

(b) (6)¹⁸ (AR 380-5, ¶ 1-9.) Instead, (b) (6) forwarded (b) (6) email to BG Le Doux, adding (b) own input which questioned (b) (6) opinion – stating “I don’t believe HQDA is the proper clearance authority” – and ultimately left the decision as to how to respond to the HQDA request in BG Le Doux’s lap. (Exhibits. 283; 150, pp. 18, 19, 21, 24, 26, 39, 43, 45, 46)

BG Le Doux, as a general officer, is obviously very experienced in her own right, and clearly, like (b) (6), should have recognized the concerns described above.¹⁹ (b) (6) (b) (5)

(b) (6) may shield her somewhat, but ultimately BG Le Doux appears to have taken personal ownership of the decision regarding whether and when to send the book to HQDA. (Exhibit 245, pp. 7, 8, 20-21) She stated unequivocally that “*my initial concern was . . . retribution against (b) (6) and that she directed both her IG and (b) (6) to conduct several inquiries in this regard as a pre-condition to forwarding the book.* (Exhibit 245, pp. 7-8, 20-21)(emphasis added)) (b) (6) initial inquiries regarding (b) (6) NDAs and the DoD IG investigation occurred the day after (b) (6) initially notified BG Le Doux of HQDA’s inquiry, and in (b) (6) initial email inquiry seeking the DoD IG investigation (b) (6) expressly noted that (b) (5), (b) (6)

(b) (6) (Exhibits 163, 246) Despite (b) protestations that this was entirely BG Le Doux’s decision,²⁰ (b) (6) did acknowledge having provided at least some input, in which (b) agreed with BG Le Doux that (b) (5), (b) (6). (Exhibit 150, pp. 46)

(b) (6) made contemporaneous statements indicating that he personally believed DIA might be engaging in retaliation – i.e., that he was not merely parroting BG Le Doux’s concerns.²¹ (Exhibits 162, 166, 307) (b) (6)

BG Le Doux unhesitatingly told the

¹⁸ (b) (6) was aware at the time of the HQDA inquiry that initial distribution of (b) (6) book was scheduled for 19 August 2010 – i.e., in approximately eight weeks. (Exhibit 127)

²⁰ Exhibit 150, pp. 18, 19, 24, 26, 39, 41, 43, 45, 46.

²¹ See, for example, (b) (6) 16 June 2010 email to (b) (6) in which (b) stated, ‘(b) (6), (b) (5)’ (Exhibits 162, 307 (emphasis added).)

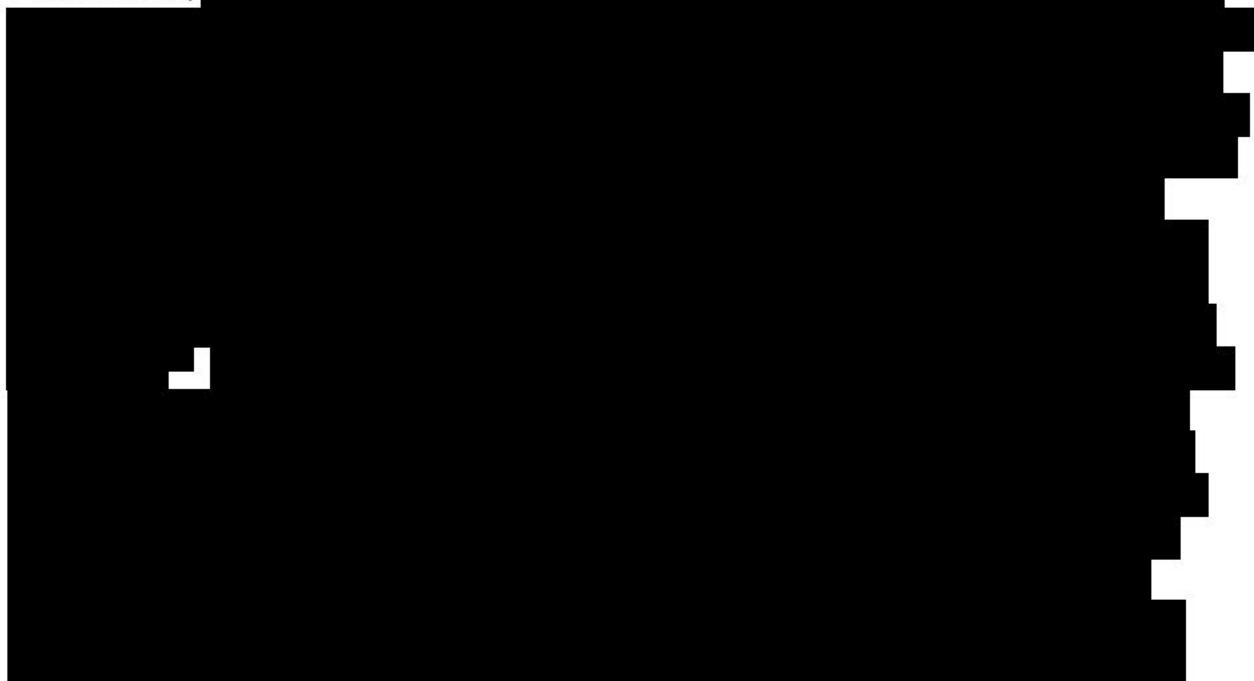
investigating officer (b) (6) had rendered no opinion on the matter whatsoever. (Exhibit 245, p. 22) Ultimately, even after the 80th TC SJA had recommended sending the book, (b) (6) turned to BG Le Doux to approve the decision. (Exhibit 286; 150, pp. 39, 41) BG Le Doux took it upon herself at that point to affirmatively clear the decision with USARC.²² (Exhibit 245, p. 21) Having obtained this approval, she subsequently approved (or apparently at least did not object to) waiting until the unit's next battle drill to send the book to HQDA. (Exhibit 245, p. 21)

(b) (6) copied BG Le Doux on subsequent email traffic concerning when the book was to be mailed, and she apparently neither expressed concern nor directed any change to the timetable. (Exhibit 288)

The fact that BG Le Doux played a substantial role in determining how and when HQDA's request was acted on does not (b) (6), however. Again, it is noteworthy that BG Le Doux's decision not to immediately comply may have been motivated in significant part by (b) (6)

(Exhibit 283)

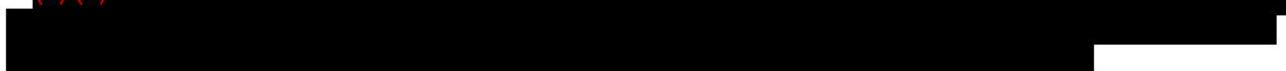
Furthermore, (b) (6)



(b)

²² Note that BG Le Doux sought this approval "on or about 2 July 2010," possibly after the Independence Day weekend – despite the fact that as of 30 June 2010, 94th DIV had obtained the DoD IG report, copies of all (b) (6) known NDAs, and assurances from HQDA that DIA was cooperating fully in the re-adjudication of (b) (6) security clearance. (Exhibits 282, 311; 245, p. 21)

²³ (b) (6)



(b) (6)

The primary reason BG Le Doux and (b) (6) both failed to send the book to HQDA immediately was (b) (6)

This is evident from statements made by them both during the time at issue, and in their subsequent interviews. (Exhs. 162, 163, 307; 150, pp. 11, 12, 46; Exhibit 245, pp. 7-8, 20-21.) As noted, BG Le Doux flatly stated in her interview that DIA retaliation was "my initial concern." (Exhibit 245, p. 8) Both BG Le Doux and (b) (6) acknowledged in their interviews that they discussed and acted on these concerns, and that they were the reason the HQDA request was not immediately acted on. (Exhibit 245, pp. 7, 20-21; Exhibit 150, pp. 12, 18, 19, 24, 26, 35-37; 39, 43, 45, 46, 67-68) Emails sent by (b) (6) reveal that both (b) (6) and BG Le Doux's actions were motivated by a belief that DIA was potentially persecuting (b) (6)²⁴ (Exhibits 162, 163, 307) During the time period addressed above, (b) (6) continued to make representations to BG Le Doux and (b) (6) that further exacerbated their suspicions regarding DIA. (Exhibits 88, 89, 125, 178) BG Le Doux noted that her concerns stemmed from the fact that "(b) (6) . . . constantly pointed out that DIA is after (b) (6)" (Exhibit 245, p. 8) (b) (6) sent emails to BG Le Doux and (b) (6) which contained detailed expositions of DIA's supposed abuses. (Exhibits 88, 89) In at least one case, (b) (6) went so far as to recommend to (b) (6) that the Army deliberately resist DIA's request for a copy of (b) (6) manuscript (suggesting that the Army should tell DIA it stands by its review and refuse DIA access to the book.) (Exhibit 88)

These emails clearly influenced BG Le Doux's and (b) (6) actions, as BG Le Doux apparently forwarded the emails to (b) (6), and (b) (6), in turn, used the information provided to discourage HQDA from pursuing the matter. (Exhibit 150, pp. 14-16.) BG Le Doux only decided to comply with HQDA's request after (b) (6) had gone directly to the 80th TC SJA Office for assistance, and the 80th TC SJA had opined that there was no basis for withholding the book – and even then she felt it necessary to clear the release through USARC. (Exh. 286; 245, p. 21) BG Le Doux would later claim, "Never at any point did we state that we did not trust DIA." (Exhibit

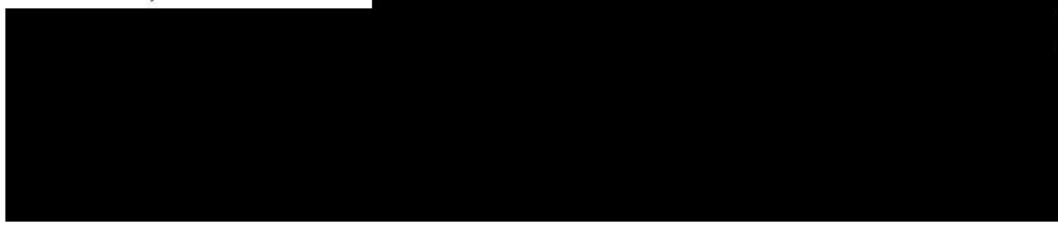
²⁴ For example, in (b) 16 June 2010 email to certain IG personnel – sent the day after (b) initially informed BG Le Doux of the HQDA request – (b) (6) says, (b) (5), (b) (6)

(emphasis added).) (b) (6)

(Exhibit 163)

245, p. 8,) However, such distrust is evident from her and (b) (6) contemporaneous statements, and their insistence on obtaining the DoD IG investigation, copies of (b) (6) NDAs with DIA, and assurances that DIA was not interfering with the readjudication of (b) (6) security clearance. (Exhibits 163, 246; 245, p. 8) BG Le Doux, however, did note in her first interview that there were "no real issues until we started getting inquiries from DIA." (Exhibit 115, p. 15) (b) (6) displayed clearer suspicions regarding DIA in (b) (6) own interviews. Despite expressing some doubt as to whether (b) (6) had been completely candid with (b) (6) regarding DIA's actions,²⁵ (b) (6) repeatedly and at times vociferously questioned DIA's motives.

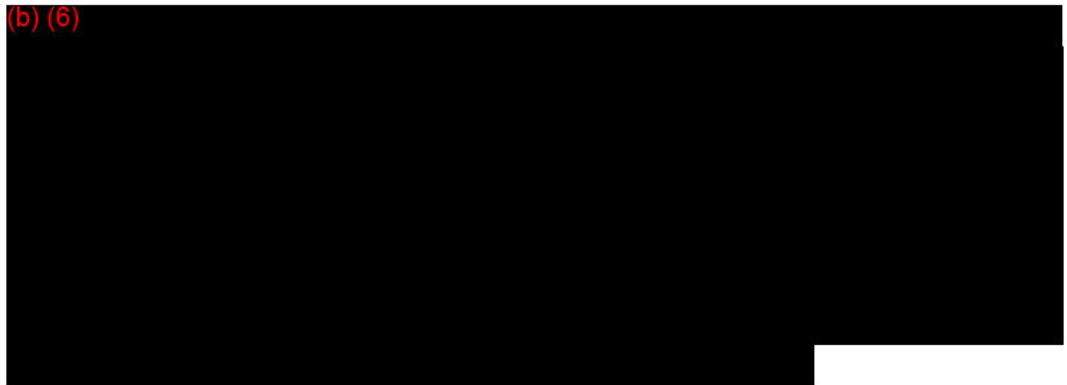
I mean, I'm only hearing one side of the story from the DIA. The relationship between (b) (6) and DIA. I don't know what the truth is out there. Do I think they would've done a – if they were provided this book, would they be given a – would they do a fair job? I don't know. My understanding – and my understanding could be wrong, because once the proverbial hit the fan, you know a lot of people got involved in this, and I think there's an e-mail out there, as long as it's true, where (b) (6) says that the Department of the Army cleared this manuscript after talking it over, and then DIA, at that point, comes up after the DIA already had the book, and comes up and says, well, look, we still have these 233 issues. I mean, if that's the case, then the Department of the Army, after knowing all of this, you know still came out and cleared that book, and DIA still had issues with it, it makes me wonder about DIA's motivation. . . . I mean, I don't know what their motivation is. All I know is – and I expressed this to – you know, in some of my e-mails, you'll see some expressions that, that me and General Le Doux had concerns, based on what the Soldier was telling us, concern of what DIA's relationship with (b) (6) is, and that the Soldier is, is convinced (b) (6)



(b) (6)



(b) (6)



(Exhibit 86, pp. 114-116.) At one point in (b) (6)'s first interview, (b) (6) stated plainly, "You guys want to focus in DIA because DIA is the organization that's causing the rift in all of this stuff. But . . . the Army owns this stuff far more than DIA." (Exhibit 86, p. 106) On 2 July 2010, after the decision to send the book had been made with USARC and 80th TC SJA approval, (b) (6) was still raising the specter of DIA retaliation to HQDA, asking if that was a "risk" HQDA was "willing to accept." (Exhibit 166) Even at the very last, when (b) (6) had (b) (6) manuscript mailed to HQDA, (b) (6) included a memorandum (b) (5), (b) (6)

(Exhibit 91) (b) (6)



It is difficult to say whether the actions of BG Le Doux, (b) (6) materially aggravated the compromise of classified information that resulted from (b) (6). (b) (6) book. (b) (6) did not receive HQDA's request for the book until on or about 14 June 2010. (Exhibits 160, 283, 307) Per email sent by (b) (6) the book was already being sent to "members of the press and the political in-crowd in DC" as of 19 June 2010. (Exhibit 127) Given the time that would have been required for HQDA to review the book and for efforts to halt the book's distribution to take effect, it is possible that the results would have been no different had (b) (6) sent the book immediately. (b) (6)



In summation, the cause of the lengthy delay in compliance with the HQDA request for a copy of (b) (6) manuscript lies with BG Le Doux, (b) (6) (b) (6) the pre-publication review process,

(b) (6)

Doux and (b) (6)

(b) (6)



Both BG Le

(b)

(b)